

**General Fee Standards  
and Guidelines:  
Recommendations for  
Compensating Wisconsin  
Corporate Guardians**

**Prepared by the Corporate Guardian  
Fee Standards Initiative  
June 2018**

# **CORPORATE GUARDIAN FEE STANDARDS INITIATIVE SUMMARY**

## **Purpose and Introduction**

The Corporate Guardian Fee Standards Initiative (Initiative) was created to analyze the current system for determining fees for corporate guardians and recommending standards and/or guidance to assist the court system (judges, registers in probate, corporation counsel, Adult Protective Services, etc.) in deciding how to consistently and adequately compensate qualified guardians. The standards and guidance outlined in this report were designed to:

- Ensure that the fees charged to the ward are fair and equitable under the circumstances and are appropriate for the services provided by the corporate guardian.
- Ensure that corporate guardian fees do not unnecessarily or prematurely erode the estate of the ward to Medicaid threshold eligibility required for participation in state Medicaid funded long term care support programs.
- Structure rates and fees so that corporate guardians are willing to accept referrals for wards with small or depleted estates.

Corporate guardians are increasingly needed to handle complex cases and cases in which family, friends, or volunteers are either unable or unwilling to serve as guardian. Costs are high and many people do not have sufficient funds to pay for their long term care and compensate guardians who are responsible for ensuring that care. Once an individual's estate is depleted, the county or state may be obligated to pay guardianship fees. Guardianship fees for long term care participants in programs such as Family Care reduce the amount that participants have available for cost share and, for those without cost share, come directly from the Managed Care Organization's (MCO) capitated payment.

The annual county survey of corporate guardian fees conducted by the Division of Quality Assurance consistently indicates that there is no uniformity of court-ordered corporate guardian rate structures or fees in Wisconsin. In coming years, the problem will worsen as the Baby Boomers age and the demand for corporate guardians grows. Whether corporate guardian fees are paid out of individual estates or public funds, fees must be fair and equitable under the circumstances and the services provided by corporate guardians and the fees paid for those services must be appropriate.

## **History**

The Initiative grew out of an ad hoc committee that was convened by the Office on Aging (OOA) in the Department of Health Services in November 2012 to begin a discourse among stakeholders about corporate guardian fees. The committee was developed in response to complaints about fees and related issues received by the OOA during the prior eighteen months. It met twice in 2013 to hear presentations from stakeholders about corporate guardian fee issues of concern to them with time for questions and discussion following each presentation.

The Initiative was convened in January 2014 and met quarterly until this report was issued in June 2018. Members conducted a literature review about guardian fees and looked at model

standards and guidelines from other states, including Ohio and Arizona. They concluded that recommendations about fees necessitated recommendations about roles and responsibilities of guardians. In 2014, the Wisconsin Guardianship Association (WGA) issued a document, Standards of Practice, Best Practices for Wisconsin Independent and Corporate Guardians. The WGA document was created using the National Guardianship Association Standards of Practice as a guide, and contains standards about fees (Standard 22) as well as duties of guardians of the person and of the estate (Standards 12 and 18). It served as the point of departure for the Initiative's work.

### **Contents of Report**

The Initiative has developed the following documents and tools related to fees and roles and responsibilities that are included in the report:

- Corporate Guardian General Fee Standards and Guidelines
- Corporate Guardian Fees – Common Scenarios
- Corporate Guardian Fees – Unresolved Issues

Also included in the report are the following:

- Wisconsin Guardianship Association Standards of Practice, Best Practices for Wisconsin Independent and Corporate Guardians
- Roles and Responsibilities Chart: Corporate Guardians, Adult Protective Services, and Managed Care Organizations
- Wis. Stats. § 54.72, Guardian Compensation and Reimbursement.
- Chapter DHS 85, Non-Profit Corporations and Unincorporated Associations as Guardians
- DQA Memo 10-015
- Resources Link

**CORPORATE GUARDIAN**  
**GENERAL FEE STANDARDS AND GUIDELINES**

These standards and guidelines are intended to supplement the Wisconsin Guardianship Association Standards of Practice and Standard 22 – Guardianship Service Fees as well as Wis. Stats. § 54.72 and Chapter DHS 85. They are designed to assist judges, registers in probate, corporation counsel, Adult Protective Services, corporate guardians, guardians ad litem, MCOs, and other attorneys, parties, and interested persons who participate in the court system in determining how to consistently and adequately compensate qualified corporate guardians. Certain standards and guidelines provide additional best practices, while others clarify practices set forth in the WGA document. In all cases, compensation paid to guardians for services provided to or on behalf of the ward shall be reasonable, and guardian services and fees must be tailored to be in the ward’s best interest and to meet the unique circumstances of each ward.

**Categories of Payments to Corporate Guardians**

- Reasonable compensation for services provided by the guardian.
- Reasonable compensation for services provided by an employee of the guardian or a third-party hired by the guardian.
- Reimbursement of expenses incurred by the guardian.
- Reimbursement of expenses incurred by an employee of the guardian or a third-party hired by the guardian.

**General Considerations**

1. Reasonable compensation for corporate guardians shall be determined on a case-by-case basis, applying consistent compensation standards and guidelines and balancing the totality of the circumstances.
2. General factors for consideration by the court include:
  - Agency size and structure, including staff expertise and training (non-profit/not-for-profit; “mom and pop shop”/large organization with multiple services, large staff).
  - Where the ward resides relative to guardianship jurisdiction.
  - Nature and probable duration of the ward’s cognitive impairment.
  - Effect of guardian fees on the ward’s financial ability to meet his or her foreseeable health, medical care, and maintenance needs.
  - Overall difficulty and complexity of the case.

3. The court must approve compensation and reimbursement of expenses before a guardian may be paid. However, charges may be incurred by the guardian prior to court approval. Wis. Stats. § 54.72 (3).
4. The guardian shall not loan funds to or borrow funds from the ward. Wis. Stats. § 54.18 (3); WGA Standard 20.II.F.
5. The guardian shall avoid actual or apparent conflicts of interest relative to a ward's personal or business affairs. The guardian shall report to the court all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the ward's best interest.
6. A guardian shall report to the court any likelihood that the ward's funds will be exhausted and advise the court whether the guardian intends to seek withdrawal as the guardian. In such a case, the guardian must continue to serve until a suitable replacement is found. WGA Standard 22.V.
7. A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the ward's best interest or upon court order.

### **Reasonable Compensation**

1. Corporate guardians are entitled to *reasonable compensation* for their services. Compensation should be fair, appropriate, and timely paid.
2. When assessing reasonable compensation, the court shall weigh the totality of the circumstances in each case and consider the statutory factors:
  - The reasonableness of the services rendered.
  - The fair market value of the services rendered.
  - Any conflict of interest of the guardian.
  - The availability of another to provide the services.
  - The value and nature of the ward's assets and income, including the sources of the ward's income.
  - Whether the ward's basic needs are being met.
  - The hourly or other rate proposed by the guardian for the services.

Wis. Stats. § 54.72 (1) (b); WGA Standard 22.VII.

3. The amount of compensation may be determined on an hourly basis, as a monthly stipend (flat fee), or on any other basis that the court determines is reasonable under the circumstances. Wis. Stats. § 54.72 (1) (c). Examples:
  - Flat fee: The court orders that a guardian for wards receiving Medicaid benefits be compensated at a rate of \$200 per month to cover an average of three hours of services provided. Variations to the flat fee may be considered by the court when increased activity by the guardian is necessary. When a guardian works on a flat monthly fee, the

guardian commonly asks for additional startup/closeout fees. Generally, these fees are in an amount between one to one and one-half times the monthly fee, and are requested in advance of the first month of the guardianship and then again before the ward's file is closed. These fees are designed to compensate the guardian for the additional time needed to complete the startup and closeout process. Examples of activities often included in startup/closeout fees are: attending hearings; securing assets; opening bank accounts; connecting with the ward, his or her family, and the care team; contacting physicians; addressing emergent concerns; applying for appropriate benefits, services, and supports; reviewing support plans and medical records; filing probate documents, such as inventories and accountings; listing and selling property; closing accounts; notifying Social Security and other benefit programs; cleaning out residences; and assisting with funeral arrangements.

- Hourly rate: The court orders that a guardian be compensated at an hourly rate and bills monthly according to the amount of time spent on ward-specific guardian duties. This type of rate is most commonly associated with private pay guardianships.
4. Prior to approval of a monthly stipend or flat fee, the guardian shall disclose to the court in writing the basis or justification for the amount of the proposed monthly stipend or flat fee, specifying in detail the services included in any flat-fee, the units of each service, and the usual hourly rate for such services. The actual delivery of services included with the flat fee shall be documented, as well as any startup or closeout costs.
  5. Prior to approval of an hourly rate, the guardian shall disclose to the court in writing the proposed rate and basis for that rate and, if it is higher than the usual hourly rate for such services, provide justification for the higher rate. The hourly rate charged for any given task shall be at the approved rate commensurate with the task performed, regardless of who actually performed the task.
  6. "Block billing" for services provided is not permitted. Block billing occurs when a total amount of time spent working on multiple tasks is provided, rather than an itemization of the time expended on each specific task. Exceptions may be permitted at the court's discretion. For example, a court might permit a guardian to bill each ward one hour per month for banking, opening mail, and paying bills.
  7. "Value billing" for services provided is not permitted when guardians are compensated on an hourly basis. Value billing is the amount that is charged for services based on the price of the service instead of how much time was dedicated to the project. Only the actual time expended may be compensated.
  8. Travel time and waiting time may be billed, except when time is spent on other billable activity while traveling or waiting. Travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication; for example, telephonic court hearings.
  9. Billable time that benefits multiple wards, including travel and waiting time, banking, postal and mail-related activities, and routine bill paying, shall be appropriately apportioned between each ward.
  10. Billable time does not include time spent on billing activities or internal business activities, including clerical and secretarial support provided to the guardian.

11. Fees shall be documented, and shall clearly and accurately state: the date and time spent on a task, the task performed, expenses incurred, collateral contacts involved, and identification of the individual who performed the task and skill level.
12. Guardians shall perform tasks that require the attention and skill level of a guardian. The court should consider whether a different person could have rendered better, faster, or less expensive service (e.g., shoppers, housecleaners, plumbers, electricians, care providers, real estate agents, etc.). The court may also consider the result of the task performed, the fidelity and loyalty displayed by the guardian, including whether the guardian put the best interest of the ward before the economic interest of the guardian, whether benefits were derived from the efforts, and whether probable benefits exceeded costs.
13. Attorneys or other professionals may serve as guardians, but may not charge an attorney or other professional rate for their services. While acting as guardian, they may only charge a reasonable guardianship rate.
14. The court shall approve the fee structure and compensation at the time of the initial appointment of the guardian, unless the court finds that circumstances warrant otherwise. In all cases, the guardian shall disclose in writing the basis or justification for the fee prior to the court's approval. During the course of the guardianship, the guardian shall seek authorization from the court for any fee changes or for fee-generating activities not contained in the appointment, and disclose a detailed explanation for any claim for such fees or activities.
15. A guardian may not seek payment of fees from a ward receiving Medicaid benefits until after the ward's health insurance, spousal support, and personal needs allowance have been paid.

### **Reimbursement of Expenses**

Corporate guardians are entitled to reimbursement of expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers. Wis. Stats. § 54.72 (2). A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the court.

#### 1. Guardian Expenses

- Reasonable costs incurred in the best interest of the ward are reimbursable at actual cost, without "mark up" or increase in price.
- Reimbursable costs include, but are not limited to postage, goods or services obtained for or consumed by the ward, process servers, publication fees, etc.
- Reimbursable costs do not include agency overhead (any cost not specifically or directly associated with the delivery of goods or services to an identified ward) or time and expenses to correct an error made by the guardian and/or staff or to defend a case for removal as guardian.

## 2. Other Expenses

- Professional services shall be tailored to the specific circumstances of each case in order to meet the best interest of each ward.
- The guardian shall not perform professional or direct services for the ward.
- The guardian shall not receive incentives or compensation from any direct service provider providing services to a ward.
- The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. The guardian shall coordinate services rather than provide services directly.
- The guardian shall be independent from all service providers. Exceptions shall be in the best interest of the ward and approved by the court.



## CORPORATE GUARDIAN FEES – COMMON SCENARIOS

The source of funding for corporate guardian fees is of concern to wards, guardians, courts, counties, and others. In most cases, wards over age 65 with significant assets will not be receiving benefits of any kind except for Social Security. These wards are typically considered to be private pay, meaning the ward is responsible for payment of corporate guardian fees. Private pay wards constitute a minority of guardianships served by corporate guardians. Even when a ward has significant assets when the guardianship is established, the high cost of long-term care may deplete those assets prior to the ward's death, thereby, requiring the ward to become dependent on Medical Assistance (Medicaid).

In the majority of cases, funding sources available to pay for corporate guardian fees depend on the type of benefits a ward receives, such as Supplemental Security Income or Medical Assistance in one form or another. The benefits that a ward receives may depend on where the ward resides.

Below are five common scenarios that courts and other interested parties may encounter. Each scenario explains the process used to determine whether a ward has a sufficient funding source available to pay corporate guardian fees along with problems and potential outcomes.

### **1. Ward receives Social Security, is enrolled in Family Care (Medicaid waiver benefit), and resides in a Community-Based Residential Facility (CBRF), Adult Family Home (AFH), or group home.**

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward's "countable income" as provided for in the Medicaid Eligibility Handbook, thereby reducing the Ward's "cost share" or the amount of income Ward has available to contribute to the cost of Family Care services. "Cost share" refers to a member's payment obligation in Home and Community Based Waivers programs (Family Care/Partnership) in order to maintain eligibility. Ward's "countable income" is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys' fees, and other allowable items. As a result of all of the reductions that apply to the Ward's income, the Managed Care Organization (MCO) pays more toward the cost of Ward's care. The reduced "cost share" does not affect Ward's personal spending allowance since personal spending allowances are set at a fixed rate by the Medicaid program. If Ward resides in substitute care, Ward must have sufficient funds to pay his or her monthly room and board. If these costs are not accounted for prior to payment of guardian fees, Ward may not have sufficient income to meet Ward's obligation to pay for room and board, and may have to move.

### **2. Ward receives Social Security, is enrolled in Family Care (Medicaid waiver benefit), and resides in his or her own home or apartment.**

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward's "countable income" as provided for in the Medicaid Eligibility Handbook, thereby reducing Ward's "cost share" or the amount of income

Ward has available to contribute to the cost of Family Care services. “Cost share” refers to a member’s payment obligation in Home and Community Based Waivers programs (Family Care/Partnership) in order to maintain eligibility. Ward’s “countable income” is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys’ fees, and other allowable items. In most cases, Ward pays no “cost share” because all Ward’s income is used for expenses such as rent or a mortgage, insurance, utilities, groceries, personal items, etc. This also means that no income is available to pay for guardian fees. Typically, either a volunteer guardian is needed or a third party payer must cover the cost of guardian fees, such as county human services departments, trusts, or families. As with Wards who are Family Care members residing in substitute care, Wards who are Family Care members residing in their own home or apartment must have sufficient funds to pay for the monthly expenses described above. If these expenses are not accounted for prior to payment of guardian fees, Ward may not have sufficient income to meet Ward’s obligation to pay for them. If this is the case, Ward may not have sufficient income to continue to reside in the community and may have to move.

**3. Ward receives Social Security, is enrolled in Nursing Home (Institutional) Medicaid, and resides in a Nursing Home. (In most cases, a Ward who resides in a Nursing Home is not enrolled in Family Care.)**

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward’s “countable income” as provided for in the Medicaid Eligibility Handbook, thereby reducing Ward’s “patient liability” or the amount of income Ward has available to contribute to the cost of Medicaid services. “Patient liability” refers to a member’s payment obligation in Institutional Medicaid in order to maintain eligibility. Ward’s “countable income” is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys’ fees, and other allowable items. As a result of all the reductions that apply to Ward’s income, Medicaid pays more toward the cost of Ward’s nursing home care. The reduced “patient liability” does not affect Ward’s personal spending allowance since personal spending allowances are set at a fixed rate by the Medicaid program.

**4. Ward receives Supplemental Security Income (SSI) and Medicaid benefits, but is not enrolled in Family Care, and resides in an institutional setting, such as nursing homes, State centers for the disabled (e.g., Northern Wisconsin Center), or psychiatric treatment centers (e.g., MMHI, WMHI, Trempealeau Health Center, etc.).**

SSI is fixed at \$30 per month when Ward resides in a nursing home or other institutional setting, such as a State center for the disabled or a psychiatric treatment center. The amount is fixed at such a low rate because it is assumed that these institutions provide for all of the Ward’s care. The low income received by Ward means there is no income available to pay for guardian fees. Typically, either a volunteer guardian is needed or a third party payer must cover the cost of guardian fees, such as county human services departments, trusts, or families.

**5. Ward has significant assets, is not receiving Medicaid benefits of any kind, and is, therefore, considered to be private pay. Ward resides in his or her own home or apartment at the time of appointment, but may need to be moved to a supported residential setting during the guardianship.**

Ward's income and assets exceed the Medicaid eligibility threshold. Often Guardian is required to manage a number of diverse assets including homes, income properties, vehicles, insurance policies, trusts, investments, etc. Ward is not receiving Medicaid benefits of any kind so there are no additional supports provided, such as case managers. Guardian must assist with tasks such as securing homes, facilitating estate sales, selling homes or other properties, selling vehicles, consolidating and/or liquidating investment so that liquid assets are available to pay for Ward's supports and services, and moving Ward into a supported residential setting. Since Guardian is required to interact directly with providers, Guardian will spend significantly more time ensuring Ward receives necessary supports and services, especially when Ward resides in his or her own home or apartment. A private pay, hourly rate is often used in these cases to cover Guardian's increased involvement and responsibility.

## **CORPORATE GUARDIAN FEES – UNRESOLVED ISSUES**

The Initiative was charged with the specific task of analyzing the current system for determining fees for corporate guardians and recommending standards and/or guidance to assist the court system in deciding how to consistently and adequately compensate qualified guardians. During its analysis, the Initiative concluded that a delineation of roles and responsibilities for guardians was also necessary. Finally, over the course of its work, a number of other important related issues came to the Initiative's attention. The Initiative was unable to address these issues because they were outside the scope of its charge and time was limited. However, several of the most important issues are briefly discussed below with the hope that another committee or workgroup will be formed to deal with one or more of them.

### **1. Non-payment of corporate guardian fees for time spent attending guardianship hearings in cases where the petition for guardianship is denied.**

Professional guardianship agency fees are not approved by the court until after the agency is appointed as guardian. In some cases, a corporate guardian is required to attend multiple hearings and, ultimately, the petition for guardianship is denied. The guardian's fees are not approved because the guardian was not appointed as guardian in the case. However, all other professionals in attendance at the hearings are compensated for their time, including Corporation Counsel, Guardians ad Litem, adversary counsel, physicians, social workers, etc. Corporate guardians, as professionals, must be recognized and compensated accordingly.

Possible Solutions:

- Include corporate guardian fees in the allowable expenses covered by the county petitioning for the guardianship.
- Allow corporate guardian agencies to attend hearings telephonically.

### **2. Non-payment of corporate guardian fees in cases involving wards with inadequate assets.**

Professional guardianship agencies are often the guardian of last resort. Increasingly, professional agencies are called upon to assist in difficult and complex situations in which little, if any, financial information about the ward is available until after the guardian is appointed. Often, the corporate guardianship agency will spend a significant amount of time working on a case only to learn there are no assets and no way to pay for the guardian's fees. The agency's request for county funding to cover this cost is frequently denied, leaving the agency with no way to cover its fees and expenses.

Compensation will continue to be a barrier to finding qualified guardians willing to serve in complex situations, particularly in cases involving wards with little or no assets.

Possible Solution:

- Grant petitions requesting that guardian fees be paid by the county petitioning for the guardianship.

### **3. Guardians and end-of-life decision-making.**

### **4. Guardian monitoring and oversight.**

## **5. Training requirements for all guardians with an emphasis on corporate guardianship agencies.**

Possible Solutions:

- Require training prior to approval under DHS Chapter 85 as corporate guardian or appointment of volunteers and family members as guardians.
- Require ongoing training for volunteers and family members. Corporate guardians already have continuing training requirements.

## **6. Requirements for becoming a corporate guardian.**

Possible Solution:

- Revise DHS Chapter 85.
- Insurance recommendations.

## **7. Requirements for guardian background checks.**

Possible solutions:

- Requirements
  - When should they be required.
  - What should the process include.
  - Who should be responsible.
- Guardian misconduct registry.

## **Initiative Membership**

### Current Members:

The Honorable Andrew Bissonnette (retired, Dodge County)  
The Honorable Gregory Gill, Jr., Outagamie County Probate Court  
Doreen Goetsch, Department of Health Services Office on Aging, APS  
Grace Knutson, Director, Guardianship Support Center, GWAAR  
Alice Page, Department of Health Services, Office on Aging, APS  
Kay Schroeder, Corporate Guardians of Northeast Wisconsin (corporate guardian)  
Dinh Tran, Department of Health Services, Division of Quality Assurance  
Nan Upright-Sexton, ANS Guardianship Services (corporate guardian)

### Past Members:

Jody Bartels, Grant County Register in Probate  
Cheryl Beekman, Brown County Register in Probate  
Alene Kleczek Bolin, (former) Sauk County Assistant Corporation Counsel  
Tami Eisenga, (former) Green Lake County Register in Probate  
John Etzler, (former) Department of Health Services, Office of Family Care Expansion  
Susan Fisher, former Director, Guardianship Support Center, GWAAR  
Ardell Klaske, Fond du Lac County Register in Probate  
Ann Lamberg, Department of Health Services, Bureau of Managed Care  
Susan Podebradsky, (former) Dane County Guardianship Administrator  
Kyle Sargent, Outagamie County District Attorney's Office  
Tom Stratton, (former) Outagamie County Department of Health and Human Services

**W**isconsin

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**A**ssociation

**Standards of Practice**

**Best Practices for  
Wisconsin Independent  
and  
Corporate Guardians**

Adopted 2014  
First Edition 2014  
Revised 02/10/2015

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**The WGA Best Practice Standards Committee Members responsible for the creation of this document are the following:**

**Corporate Guardians of Northeast Wisconsin, Kay Schroeder, NCG, President**  
**Empathos Solutions, Inc, Dan Dillon**  
**Family Services, Inc. of Barron Co, Judy Nelson**  
**Golden Care Services, Ruth Zych**  
**Opportunities, Inc, Linda Branson**

**This document was created using the National Guardianship Association Standards of Practice document as a guide.**



## Definitions

**ADVANCE DIRECTIVE** - A written instruction, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his or her desires.

**ADVOCATE** - To assist, defend, or plead in favor of another.

**ARM'S-LENGTH RELATIONSHIP** - A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both.

**BEST INTEREST** - The course of action that maximizes what is best for a person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the person.

**CAPACITY** - Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one's acts. (Black's)

**CONFLICT OF INTEREST** - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

**COURT** - An arm of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. (Black's)

**COURT ORDER** - A legal document issued by the court and signed by a judge. Examples include a letter of guardianship spelling out directions for the care of the person and the estate and an authorization or denial of a request for action.

**COURT-REQUIRED REPORT** - A report that the guardian is required by statute or court order to submit to the court relative to the guardianship.

**DESIGNATION OF GUARDIAN** - A formal means of nominating a guardian before a guardian is needed.

**DIRECT SERVICES** - These include medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

**ESTATE** - Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

**EXTRAORDINARY MEDICAL CIRCUMSTANCE** - Includes abortion, removal of life support, sterilization, experimental treatment, and other controversial medical issues.

**FIDUCIARY** - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

**FREESTANDING ENTITY** - An agency or organization that is independent from all other

agencies or organizations

**FUNCTIONAL ASSESSMENT** - A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

**GUARDIAN** – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

**Conservator** is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.

**Emergency/Temporary Guardian** is a guardian whose authority is temporary and who is usually appointed only in an emergency.

**Foreign Guardian** is a guardian appointed in another state or jurisdiction.

**Guardian of the Estate** is a guardian who possesses any or all powers and rights with regard to the property of the individual.

**Guardian of the Person** is a guardian who possesses any or all of the powers and rights granted by the court with regard to the personal affairs of the individual.

**Limited Guardian** is a guardian appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.

**Plenary Guardian** is a person appointed by the court to exercise all delegable rights and powers of the person after the court finds the person lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

**Pre-Need Guardian** is a guardian who is formally nominated before a guardian is needed.

**Standby Guardian** is a person, agency, or organization whose appointment as guardian becomes effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.

**Successor Guardian** is a guardian who is appointed to act upon the death or resignation of a previous guardian.

**INFORMED CONSENT** - A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

**LEAST RESTRICTIVE ALTERNATIVE** - A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

**PERSON UNDER GUARDIANSHIP OR SIMPLY "PERSON"** - A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Conservatee, Disabled Person, Protected Person, Incapacitated Person and Ward.

**PERSON-CENTERED PLANNING**<sup>1</sup> - A family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand and clearly describe the unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- Is supported in a web of relationships, both natural and paid, within their communities.

**PRUDENT INVESTOR RULE** - All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and the guardian who does not use risk-reducing strategies may be penalized. Under most circumstances, the person's assets must be diversified. The guardian is obligated to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk. The possible effects of inflation must be considered as part of the investment strategy. The guardian shall either demonstrate investment skill in managing assets or shall delegate investment management to another qualified party.

**SELF-DETERMINATION** - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

**SOCIAL SERVICES** - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

**SUBSTITUTED JUDGMENT** - The principle of decision-making that requires implementation of the course of action that comports with the individual person's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

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<sup>1</sup> Personal communication with Michael Smull, Mary Lou Bourne & Leigh Ann Kingsbury, Support Development Associates, LLC ( May 2, 2012). See Michael Smull, The Learning Community for Person Centered Practices, [www.learningcommunity.us](http://www.learningcommunity.us) (April 2012). See also John O'Brien & Connie Lyle O'Brien, eds., *A Little Book About Person Centered Planning*, Inclusion Press (2000).

## **NGA and CGC Qualifications for Court-Appointed Guardians**

**Corporate Guardian** - A corporate guardian is a corporation that is named as guardian for an individual and may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities, and nonprofit entities.

Guidelines:

A corporate guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national certified guardians and national master guardians.

**Family Guardian** - A family guardian is an individual who is appointed as guardian for a person to whom he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective person, the court prefers to appoint the family member as guardian. On court approval, a family guardian may receive reasonable compensation for time and expenses relating to care of the person.

Guidelines:

A family guardian:

1. Is encouraged to recognize the resources available through the NGA and WGA.
2. Shall follow the *Model Code of Ethics for Guardians*.
3. Shall follow the *NGA Standards of Practice* when carrying out guardianship responsibilities.

**Individual Professional Guardian** - An individual professional guardian is an individual who is not related to the person by blood or marriage and with court approval may receive compensation in his or her role as guardian. He or she usually acts as guardian for two or more individuals.

Guidelines:

An individual professional guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to become a national certified guardian and national master guardian, if applicable.

**National Master Guardian** - A national master guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national master guardian:

1. Shall meet the Master guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *Model Code of Ethics for Guardians*.
3. Shall follow the *NGA Standards of Practice*.

**Public Guardian** - A public guardian is a governmental entity that is named as guardian of an individual and may receive compensation in its role as guardian with court approval. Public guardians may include branches of state, county, or local government.

Guidelines:

A public guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national registered guardians and national master guardians.

**National Certified Guardian** - A national certified guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national certified guardian:

1. Shall meet the National certified guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *Model Code of Ethics for Guardians*.
3. Shall follow the *NGA Standards of Practice*.
4. Should strive to become a national master guardian.

**Volunteer Guardian** - A volunteer guardian is a person who is not related to the person by blood or marriage and who does not receive any compensation in his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval.

Guidelines:

A volunteer guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Is encouraged to become a national certified guardian and national master guardian, if applicable.

## **WGA Standards of Practice**

### **Standard 1 – Applicable Law and General Standards**

- I. The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships.
- II. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians as defined by Wisconsin Statutes and Codes and Department of Health Services:
  - A. Chapter 51 – Mental Health Act
  - B. Chapter 54 – Guardianship And Conservatorships
  - C. Chapter 55 – Protective Service System
  - D. Wisconsin Department of Health Services Administration Code 85 - Non–Profit Corporations and Unincorporated Associations as Guardians
- III. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.
- IV. Every guardian should be held to the same standards, regardless of familial relationship, except a guardian with a higher level of relevant skills shall be held to the use of those skills.

### **Standard 2 – The Guardian’s Relationship to the Court**

- I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and all decisions and actions shall be consistent with the court order specific to the ward.
- II. The guardian shall obtain court authorization for actions that are subject to court approval.
- III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action.
- IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.
- V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.
- VI. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute through the use of annual condition of the ward and annual accounting reports.
- VII. The guardian shall use available technology to:
  - A. File the general plan, inventory and appraisal, and annual reports and accountings
  - B. Access responsible education and information about guardianships
  - C. Assist in the administration of the estate.
- VIII. The guardian shall inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian’s authority.

### **Standard 3 – The Guardian’s Professional Relationship with the Person**

- I. The guardian shall treat the person under guardianship with dignity.
- II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
- III. The guardian may not engage in sexual relations with the person under guardianship unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.
- IV. The guardian shall follow the Wisconsin Department of Health Services Administration Code 85 which requires 20 hours of ongoing education within a 2(two) year period concerning the following:
  - A. Person-centered planning
  - B. Best Interest decision-making
  - C. Responsibilities and duties of guardians
  - D. Legal processes of guardianship

### **Standard 4 – The Guardian’s Relationship with Family Members and Friends of the Person**

- I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.
  - A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.
  - B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.
- II. The guardian shall make reasonable efforts to maintain the person’s established social and support networks during the person’s brief absences from the primary residence.
- III. When disposing of the person's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).
- IV. The guardian shall make reasonable efforts to preserve property designated in the person's will and other estate planning devices executed by the person.
- V. The guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.
- VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The guardian may request and consider family input when making medical decisions.

Note: Refer to Standard 11 as it relates to confidentiality issues.



## **Standard 5 – The Guardian’s Relationship with Other Professionals and Providers of Service to the Person**

- I. The guardian shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation on behalf of the person.
- II. The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community.
- III. The guardian shall stay current with changes in community resources to ensure that the person under guardianship receives high-quality services from the most appropriate provider.
- IV. A guardian who is not a family member guardian may not provide direct service to the person. The guardian shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.
- V. The guardian shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person.
- VI. The guardian shall make a good faith effort to cooperate with other Best Interest decision-makers for the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, trustee, VA fiduciary, and representative payee.
- VII. The guardian may consider mentoring new guardians.

## **Standard 6 – Informed Consent**

- I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent as referred to in Chapter 54.25(2)(d)2.
- II. Informed Consent is an individual’s agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
- III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.
- IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.
- V. In evaluating each requested decision, the guardian shall consider the following:
  - A. Have a clear understanding of the issue for which informed consent is being sought
  - B. Have a clear understanding of the options, expected outcomes, risks, and benefits of each alternative
  - C. Determine the conditions that necessitate treatment or action
  - D. Encourage and support the person in understanding the facts and directing a decision
  - E. Maximize the participation of the person in making the decision
  - F. Determine whether the person has previously stated preferences in regard to a decision

of this nature

- G. Determine why this decision needs to be made now rather than later
- H. Determine what will happen if a decision is made to take no action
- I. Determine what the least restrictive alternative is for the situation
- J. Obtain a second medical or professional opinion, if necessary
- K. Obtain information or input from family and from other professionals as appropriate
- L. Obtain written documentation of all reports relevant to each decision

### **Standard 7 – Standards for Decision-Making**

- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.
- II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.
  - A. The guardian shall ask the person what he or she wants.
  - B. If the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
  - C. If the person, even with assistance, cannot express his or her goals and preferences, the guardian shall seek input from others familiar with the person to determine what the individual would have wanted.
- III. Best Interest is the principle of decision-making that should be used when:
  - A. The person has never had capacity; the person's goals and preferences cannot be ascertained even with support
  - B. Following the person's wishes would cause substantial harm to the person.
  - C. The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
  - D. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

## **Standard 8 – Least Restrictive Alternative**

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person while maintaining the person's dignity, rights, protection, and safety.
- III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
  - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
  - B. The guardian shall strive to know the person's goals and preferences.
  - C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

## **Standard 9 – Self-Determination of the Person**

- I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to his or her personal care and financial needs.
- II. The guardian shall attempt to maximize the self-reliance and independence of the person.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.
- IV. The guardian shall participate in the implementation of a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.
- V. The guardian shall, wherever possible, seek to ensure that the person leads the planning process and at a minimum ensure that the person participates in the process.

## **Standard 10 – The Guardian’s Duties Regarding Diversity and Personal Preferences of the Person**

- I. The guardian shall determine the extent to which the person under guardianship identifies with particular ethnic, religious, and cultural values. To determine these values, the guardian shall also consider the following:
  - A. The person’s attitudes regarding illness, pain, and suffering
  - B. The person’s attitudes regarding death and dying
  - C. The person’s views regarding quality of life issues
  - D. The person’s views regarding societal roles and relationships
  - E. The person’s attitudes regarding funeral and burial customs
- II. The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, that the person is not victimized, their privacy is ensured, and that an environment conducive to this expression is provided.
  - A. The guardian shall ensure that the person has information about and access to accommodations necessary to permit sexual expression to the extent the person desires and to the extent the person possesses the capacity to consent to the specific activity.
  - B. The guardian shall take reasonable measures to protect the health and well-being of the person.
  - C. The guardian shall ensure that the person is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the person the level of protection appropriate to the person's lifestyle and ability, while considering the preferences of the person. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.
  - D. The guardian shall protect the rights of the person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the person's values and customs.

## **Standard 11 - Confidentiality**

- I. The guardian shall keep the affairs of the person under guardianship confidential.
- II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.
- V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk.

## **Standard 12 – Duties of the Guardian of the Person**

- I. The guardian shall have the following duties and obligations to the person under guardianship unless the order of appointment provides otherwise:
  - A. To see that the person is living in the most appropriate environment that addresses the person's goals, needs, and preferences.
    1. The guardian shall have a strong priority for home or other community- based settings, when consistent with the person's goals and preferences.
    2. The guardian shall authorize moving a person to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the person and serves the overall best interest of the person.
    3. The guardian shall consider the proximity of the setting to those people and activities that are important to the person when choosing a residential setting.
    4. At a minimum the guardian shall report to a court before a move to a more restrictive residential setting and state the justification for the move

## **Standard 13 – Guardian of the Person: Initial and Ongoing Responsibilities**

- I. With the proper authority, initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the person under guardianship that require immediate action.
  - B. The guardian shall meet with the person within 14 days after the appointment. At the first meeting, the guardian shall:
    1. Communicate to the person the role of the guardian
    2. Explain the rights retained by the person
    3. Assess the person's physical and social situation, the person's educational; Vocational; and recreational needs, the person's preferences, and the support systems available to the person
    4. Attempt to gather any missing necessary information regarding the person
  - C. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The guardian shall:
    1. Obtain an evaluation of the person's condition, treatment, and functional status from the person's treating physician or appropriate specialist, if a comprehensive medical evaluation was not completed as part of the petitioning process or has not been done within the past year

2. Obtain a psychological evaluation, if appropriate
  3. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts
  4. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person
- II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs, and preferences of the person.
- A. The plan shall emphasize a "person-centered philosophy."
  - B. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs, and preferences of the person.
  - C. The plan must also address whether the person's finances and budget are in line with the services the person needs and are flexible enough to deal with the changing status of the person.
  - D. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
  - E. The plan must be based on a multidisciplinary functional assessment.
  - F. The plan must be updated no less often than annually.
- III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:
- A. The person's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications
  - B. All legal documents involving the person
  - C. Advance directives
  - D. A list of key contacts
  - E. A list of service providers, contact information, a description of services provided to the person, and progress/status reports
  - F. A list of all over-the-counter and prescribed medication the person is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication
  - G. Documentation of all client and collateral contacts, including the date, time, and activity
  - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the person
  - I. The guardianship plan
  - J. An inventory

- K. Assessments regarding the person's past and present medical, psychological, and social functioning
  - L. Documentation of the person's known values, lifestyle preferences, and known wishes regarding medical and other care and service
  - M. A photograph of the person
  - N. Ward Rights and Grievances
- IV. The guardian shall visit the person no less than quarterly.
- A. The guardian shall assess the person's physical appearance and condition and assess the appropriateness of the person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
  - B. The guardian shall maintain substantive communication with service providers, caregivers, and others attending to the person.
  - C. The guardian shall participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the person.
  - D. The guardian shall require that each service provider develop an appropriate service plan for the person and shall take appropriate action to ensure that the service plans are being implemented.
  - E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the person at the place of residence and at any program site to ascertain that the care plan is being properly followed.
  - F. The guardian shall advocate on behalf of the person with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the person, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.
  - G. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the individual's current goals, needs, and preferences, including but not limited to:
    - 1. Evaluating the plan
    - 2. Enforcing residents' rights, legal and civil rights
    - 3. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person
- V. The guardian shall fully identify, examine, and continue to seek information regarding options that will fulfill the person's goals, needs, and preferences.
- A. Guardians shall take full advantage of professional assistance in identifying all available options for long term services and supports.
  - B. Sources of professional assistance include but are not limited to area agencies on aging,

centers for independent living, protection and advocacy agencies, long-term care ombudsmen, developmental disabilities councils, aging and disability resource centers, and community mental health agencies.

- VI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- VII. The guardian shall become educated about the nature of any incapacity, condition, and functional capabilities of the person.

#### **Standard 14 – Decision-Making About Medical Treatment**

- I. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship.
- II. The guardian shall ensure that all medical care for the person is appropriately provided and that the person is treated with dignity.
- III. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care decision-making.
- IV. The guardian, in making health care decisions or seeking court approval for a decision, shall:
  - A. Maximize the participation of the person
  - B. Acquire a clear understanding of the medical facts
  - C. Acquire a clear understanding of the health care options and the risks and benefits of each option
  - D. Encourage and support the individual in understanding the facts and directing a decision
- V. The guardian shall use the Best Interest standard with respect to a health care decision.
- VI. The guardian shall determine whether the person, before the appointment of a guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts. On finding such documents, the guardian shall inform the court and other interested parties of the existing health care documents.
- VII. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian.
- VIII. If the person's preferences are unknown and unascertainable, the guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the person's welfare, to determine the person's best interests, which determination shall include consideration of consequences for others that an individual in the person's circumstances would consider.
- IX. Absent an emergency or the person's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the person's wishes with respect to a medical intervention, a guardian who has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria listed in Standards 6 and 7.
- X. In the event of an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of



the criteria listed in Standards 6 and 7, within the time allotted by the emergency.

- XI. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the person. The guardian shall obtain a second opinion from an independent physician.
- XII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.
- XIII. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- XIV. The guardian may not authorize extraordinary procedures without prior authorization from the court unless the person has executed a living will or health care power of attorney that clearly indicates the person's desire with respect to that action as allowable by law. Extraordinary procedures may include, but are not limited to, the following medical interventions:
  - A. Psychosurgery
  - B. Experimental treatment
  - C. Sterilization
  - D. Abortion
  - E. Electroshock therapy
- XV. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care unless not in accordance with the person's preferences and values.
- XVI. The guardian shall keep individuals that are important to the person reasonably informed of important health care decisions.

### **Standard 15 – Decision-Making About Withholding and Withdrawal of Medical Treatment**

- I. The WGA recognizes that there are circumstances in which, with the approval of the court if necessary, it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of the person under guardianship. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the person.
- II. If the person had expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, the guardian shall consider the wishes of the person. If the person's current wishes are in conflict with wishes previously expressed when/if the person had capacity, the guardian shall have this ethical dilemma reviewed by an ethics committee and if necessary, submit the issue to the court for direction.
- III. When making this decision on behalf of the person, the guardian shall gather and document information as outlined in Standard 6 and shall follow Standard 7.

## Standard 16 – Conflict of Interest: Ancillary and Support Services

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
  - A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.
    1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.
    2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
    3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.
  - B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
  - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity, and it shall have independent decision-making ability.
  - D. The guardian may not be in a position of representing both the person and the service provider.
  - E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
  - F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.
  - G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
  - H. The guardian shall neither solicit nor accept incentives from service providers.
  - I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.
  - J. A guardian who is an attorney or employs attorneys may provide legal services to a person only

when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.

- K. The guardian may enter into a transaction that may be a conflict of interest only when necessary or when there is a significant benefit to the person under the guardianship and shall disclose such transactions to interested parties and obtain prior court approval.

### **Standard 17 – Duties of the Guardian of the Estate**

- I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.
- II. When making decisions the guardian shall:
  - A. Give priority to the goals, needs, and preferences of the person
  - B. Weigh the costs and benefits to the estate
- III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.
- IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.
- V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.
- VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.
- VII. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- VIII. The guardian shall provide competent management of the person's property and shall supervise all income and disbursements of the estate.
- IX. The guardian shall manage the estate only for the benefit of the person.
- X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.
- XII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets.
- XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.
- XIV. The guardian shall employ prudent accounting procedures when managing the estate.
- XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage

estate assets and property.

- XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect, and/or exploitation as defined by state statute.

### **Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities**

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
    - 1. The guardian shall ascertain the income, assets, and liabilities of the person.
    - 2. The guardian shall ascertain the goals, needs, and preferences of the person.
    - 3. The guardian shall coordinate and consult with others close to the person.
  - B. The guardian shall meet with the person under guardianship within 14 days and:
    - 1. Communicate to the person the role of the guardian
    - 2. Outline the rights retained by the person and the grievance procedures available
    - 3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity
    - 4. Attempt to gather from the person any necessary information regarding the estate
    - 5. Contact personally quarterly and face to face annually thereafter
- II. The guardian shall become educated about the nature of any incapacity, condition, and functional capabilities of the person.
- III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs, and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.
  - A. Guardian shall value the well-being of the person over the preservation of the estate.
  - B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.

- C. The financial plan shall emphasize a “person-centered philosophy.”
- IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.
  - V. The guardian shall obtain all public and insurance benefits for which the person is eligible.
  - VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
  - VII. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.
  - VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.
  - IX. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.
  - X. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
  - XI. The guardian may monitor, provide oversight, or manage the personal allowance of the person.
  - XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

### **Standard 19 – Property Management**

- I. The guardian may not dispose of real or personal property of the person under guardianship without judicial, administrative, or other independent review giving consideration to the points listed in Standard 19, III.
- II. In the absence of reliable evidence of the person's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the person or an interest in that property unless doing so is in the best interest of the person.
- III. In considering whether to dispose of the person's property, the guardian shall consider the following:
  - A. Whether disposing of the property will benefit or improve the life of the person
  - B. The likelihood that the person will need or benefit from the property in the future
  - C. The previously expressed or current desires of the person with regard to the property
  - D. The provisions of the person's estate plan as it relates to the property, if any
  - E. The tax consequences of the transaction
  - F. The impact of the transaction on the person's entitlement to public benefits
  - G. The condition of the entire estate

- H. The ability of the person to maintain the property
  - I. The availability and appropriateness of alternatives to the disposition of the property
  - J. The likelihood that property may deteriorate or be subject to waste
  - K. The benefits versus the liability and costs of maintaining the property
- IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.
  - V. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

### **Standard 20 – Conflict of Interest: Estate, Financial and Business Services**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.
- II. Rules relating to specific situations that might create an impropriety or conflict of interest include the following:
  - A. The guardian may not commingle personal or program funds with the funds of the person, except as follows:
    - 1. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.
    - 2. When an individual or organization serves several persons, it may be more efficient and more cost-effective to pool the individual estate funds in a single account. In this manner, banking fees and costs are distributed rather than being borne by each estate separately.
    - 3. If the court allows the use of combined accounts, they should be permitted only where the guardian has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.
  - B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
  - C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above.
  - D. The guardian may not loan or give money or objects of worth from the person's estate unless specific prior approval is obtained.
  - E. The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained and a reasonable showing is made that such support is consistent with the person's goals, needs, and

preferences and will not substantially harm the estate.

- F. The guardian may not borrow funds from or lend funds to the person unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the person's benefits, and the transaction is approved by the court.
- G. The guardian may not profit from any transactions made on behalf of the person's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

### **Standard 21 – Termination and Limitation of Guardianship**

- I. Limited guardianship of the person and estate is preferred over a plenary guardianship.
- II. The guardian shall assist the person under guardianship to develop or regain the capacity to manage his or her personal and financial affairs.
- III. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
  - A. When the person has developed or regained capacity in areas in which he or she was found incapacitated by the court
  - B. When less restrictive alternatives exist
  - C. When the person expresses the desire to challenge the necessity of all or part of the guardianship
  - D. When the person has died
  - E. When the guardianship no longer benefits the person

### **Standard 22 – Guardianship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. The guardian shall:
  - A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action
  - B. Disclose a projection of annual fiduciary fees within 90 days of appointment
  - C. Disclose fee changes
  - D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment

- E. Disclose a detailed explanation for any claim for fiduciary fees
- V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.
- VI. A guardian may seek payment of fiduciary fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance, and health care insurance premiums.
- VII. Factors to be considered in determining reasonableness of the guardian's fees include:
  - A. Powers and responsibilities under the court appointment
  - B. Necessity of the services
  - C. The request for compensation in comparison to a previously disclosed basis for fees and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity
  - D. The guardian's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment
  - E. The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken
  - F. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions
  - G. The work actually performed, including the time actually expended and the attention and skill-level required for each task, including whether a different person could have rendered the service better, cheaper, and/or faster
  - H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs
  - I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate
  - J. The fees customarily paid and time customarily expended for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter
  - K. The degree of financial or professional risk and responsibility assumed
  - L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement
  - M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest
- VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:



- A. Date and time spent on a task
  - B. Duty performed
  - C. Expenses incurred
  - D. Collateral contacts involved
  - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer)
- IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

### **Standard 23 – Management of Multiple Guardianship Cases**

- I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum visit per statutory requirements for each person, and that allows regular contact with all service providers.
- II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.
  - A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.
  - B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

### **Standard 24 – Quality Assurance**

- I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.
- II. The independent review shall occur periodically but no less often than every two years and must include a review of a representative sample of cases.
- III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the person and with the individual providing direct service to the person.
- IV. An independent review may be obtained from:
  - A. A court monitoring system
  - B. An independent peer
  - C. An CGC national master guardian
- V. The quality assurance review does not replace other monitoring requirements established by the court.

## Standard 25 – Transfer or Purchase of a Guardianship Practice

- I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.
- II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.
- III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:
  - A. A professional guardian considering the sale of a guardianship practice shall ensure that the persons are considered in the sale process and that guardianship responsibilities continue to be met during the transition.
  - B. The professional guardian shall require documentation of the purchaser's references pertaining to qualifications to serve as guardian, as defined by state statutes.
  - C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons is not appropriate.
  - D. The sale price for the guardianship practice must not be the sole consideration in selecting the purchaser.
  - E. The professional guardian shall provide formal written notice of the proposed sale to the court, to the persons, and to other interested parties, even if not required by state statutes.
  - F. Consideration should be given to requesting that the court appoint a guardian ad litem, or another third party reviewer, to protect the interests of the persons.
  - G. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons during the period of the sale and transfer of ownership.
  - H. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.
  - I. The fees charged to existing persons may not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.
- IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice may not be considered a sale or purchase under this standard.

Created 11/2016

# Guardianship Support Center

## Roles and Responsibilities of Guardians, Adult Protective Services and Managed Care Organizations

Understanding the roles and responsibilities of a guardian (GP/GE), Adult Protective Services worker (APS), and managed care organization case worker (MCO) is necessary to ensure that individuals under guardianships are receiving the care and services that are in their best interest. Miscommunications between the parties involved in organizing care for a ward invite opportunities for gaps in needed care or services.

The roles and responsibilities of these actors are described in the Wisconsin Statutes, Department of Health Services (DHS) administrative code, and through the language in contracts and memorandums of understanding (MOU). The chart below attempts to organize each party's responsibilities accordingly.

Communication is a priority between APS, MCO and Guardian			
Guardian of Person (GP)	Guardian of Estate (GE)	Adult Protective Services (APS)	MCO Case Manager (MCO)
<p><b>Wisconsin Statute 54.25, Court order and DHS 85 if corporate guardian</b></p> <ul style="list-style-type: none"> <li>Anyone can petition for guardianship in WI including possible proposed guardian</li> <li>Give MCO copy of guardianship court order and letters of guardianship</li> <li>Endeavor to secure any necessary care or services for the ward that are in the ward's best interest based on:</li> </ul> <ol style="list-style-type: none"> <li>Regular, in-person, inspection of the ward's condition, surroundings and treatment</li> <li>Attendance and participation in staff meetings discussing the ward's treatment and care of any</li> </ol>	<p><b>Wisconsin Statute 54.19, court order and DHS 85 if corporate guardian</b></p> <ul style="list-style-type: none"> <li>Anyone can petition for guardianship in WI including possible proposed guardian</li> <li>Give MCO copy of guardianship court order and letters of guardianship</li> <li>Take possession of the ward's real, personal property and income</li> <li>Use the ward's income and property to maintain and support the ward and any dependents the ward is legally obligated to support</li> <li>Pay the legally enforceable debts of the ward, including filing tax returns and paying taxes owed</li> </ul>	<p><b>Wisconsin Statute 55, 46.90, MOUs</b></p> <ul style="list-style-type: none"> <li>Discretion for whether to file petition for guardianship and/or protective placements</li> <li>Collaborate on problem solving with MCO</li> <li>Adhere to MOUs with MCOs</li> <li>Emergency protective placements</li> <li>Collaborate with guardian and MCO to plan residential moves (Party that initiates transfer of ward under a protective placement must notify court of transfer)</li> <li>Review of placement if ward is protesting must be completed within 72 hours</li> </ul>	<p><b>DHS/MCO contract, MOUs, Wis. Stat. 46</b></p> <ul style="list-style-type: none"> <li>Anyone can petition for guardianship in WI including MCO, but restrictions on who can petition for protective placement</li> <li>Collaborate on problem solving with APS</li> <li>Adhere to MOUs with APS</li> <li>Set up and coordinate all services to meet member's needs (shopping, personal cares, cleaning, transportation) including paid and natural supports</li> <li>All assessments and member centered plans must be coordinated and approved by the guardian</li> </ul>



<p>facility where the ward lives or is a patient</p> <p>3) Examination of ward's health care and treatment records</p> <p>4) Inquiry into the risks, benefits of and alternatives to treatment for the ward</p> <p>5) Consultation with healthcare and social services providers to make all necessary treatment decisions</p> <ul style="list-style-type: none"> <li>• Collaborate with APS and MCO on planning and coordinating residential moves (Party that initiates transfer of a ward subject to a protective placement order must notify court of transfer)</li> <li>• Notify the court of any change of address of the guardian or ward</li> <li>• Complete annual report on the condition of the ward to the court</li> <li>• Advocate for the ward's best interest</li> </ul>	<ul style="list-style-type: none"> <li>• For a ward who receives governmental benefits for which a representative payee is appropriate, make sure ward has rep. payee, coordinate with MCO</li> <li>• Collaborate with APS and MCO on planning and coordinating residential moves (Party that initiates transfer of ward subject to a protective placement order must notify court of transfer)</li> <li>• Prepare and file an annual account</li> <li>• Perform any other duty required by the court order</li> <li>• File with the Register of Deeds of any county in which the ward possesses real property</li> <li>• Determine if the ward has executed a will, the will's location, the appropriate persons to be notified in the event of the ward's death, and if the death occurs, notify those persons, deliver ward's assets to persons entitled to them upon ward's death</li> </ul>	<ul style="list-style-type: none"> <li>• Verify the individual is in the least restrictive environment consistent with his/her needs and with the resources of the county</li> <li>• Annual Review</li> <li>• Investigate all referrals for elders at risk and all allegations of abuse and neglect. Use discretion for adult at risk referrals</li> <li>• Discretion for when to file review of conduct when allegation is made against the guardian</li> </ul>	<ul style="list-style-type: none"> <li>• Behavior support plans/Restrictive measures</li> <li>• Coordinate DVR/Employment/Pre Voc.</li> <li>• Coordinate with guardian all medical care, psychiatric services or therapies and who will attend medical appointments</li> <li>• Communicate significant changes with medical condition and case plan to guardian</li> <li>• Attend staffings and IEPs – keep guardian informed</li> <li>• Set up representative payee if guardian of estate approves</li> <li>• Collaborate with APS and guardian on all planning and coordinating of residential moves</li> <li>• Coordinate transportation for member and moving member's belongings</li> <li>• Assist with SSI applications or renewals, Medicaid and other benefit reviews or applications</li> <li>• Report any concerns of abuse and/or neglect</li> </ul>
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**QUESTIONS?** Call the Wisconsin Guardianship Support Center at 1-855-409-9410, email at [guardian@gwaar.org](mailto:guardian@gwaar.org), or see [www.gwaar.org/gsc](http://www.gwaar.org/gsc).  
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**54.72 Guardian compensation and reimbursement.** A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

**(1) COMPENSATION.**

(a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.
2. The fair market value of the services rendered.
3. Any conflict of interest of the guardian.
4. The availability of another to provide the services.
5. The value and nature of the ward's assets and income, including the sources of the ward's income.
6. Whether the ward's basic needs are being met.
7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

**(2) REIMBURSEMENT OF EXPENSES.** The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

**(3) WHEN COURT APPROVAL REQUIRED.** A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

**History:** 2005 a. 387.

When a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. *Yamat v. Verma* L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997), 96-2313.

**NOTE:** The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

## Chapter DHS 85

### NON-PROFIT CORPORATIONS AND UNINCORPORATED ASSOCIATIONS AS GUARDIANS

#### Subchapter I — General Provisions

- DHS 85.01 Purpose and authority.  
 DHS 85.02 Applicability.  
 DHS 85.03 Definitions.  
 DHS 85.04 Waivers and variances.

#### Subchapter II — Approvals

- DHS 85.05 Application.  
 DHS 85.06 Criteria for approval.  
 DHS 85.07 Change of ownership.  
 DHS 85.08 Corporate guardian closing.

#### Subchapter III — Personnel

- DHS 85.09 Staff.

- DHS 85.10 Training.  
 DHS 85.11 Staffing.  
 DHS 85.12 Conflict of interest.

#### Subchapter IV — Ward Services

- DHS 85.13 Rights of wards.  
 DHS 85.14 Duties.  
 DHS 85.15 Records.

#### Subchapter V — Withdrawal of Approval

- DHS 85.16 Actions affecting approval.  
 DHS 85.17 Appeal of decisions.

Note: This chapter replaced ch. PW 65. Chapter HSS 85 was renumbered chapter HFS 85 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 2000, No. 530. Chapter HFS 85 was renumbered chapter DHS 85 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635. Chapter DHS 85 as it existed on May 31, 2010, was repealed and a new chapter DHS 85 was created, Register May 2010 No. 653, effective June 1, 2010.

#### Subchapter I — General Provisions

**DHS 85.01 Purpose and authority.** This chapter is promulgated under the authority of ss. 54.15 (7) and 227.11 (2) (a), Stats., to establish the criteria by which the department determines whether a private nonprofit corporation organized under ch. 181, 187, or 188, Stats., or an unincorporated association is suitable to perform the duties of a guardian of the person, or of the estate, or both, of a proposed ward.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.02 Applicability.** This rule applies to private non-profit corporations or unincorporated associations applying to the department for consideration of suitability to perform the duties of guardian of a person or of an estate, or both, of a proposed ward.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.03 Definitions.** As used in this chapter:

(1) "Applicant" means a private nonprofit corporation or an unincorporated association that applies to the department for a finding of suitability to perform the duties of a corporate guardian.

(2) "Corporate guardian" or "guardian" means a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian.

(3) "Department" means the Wisconsin department of health services.

(4) "Guardian of the estate" has the meaning given under s. 54.01 (11), Stats.

(5) "Guardian of the person" has the meaning given under s. 54.01 (12), Stats.

(6) "Guardianship program" means a system that is established by a corporate guardian to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of its wards under ch. 54, Stats.

(7) "Guardianship program manager" means an employee designated by a corporate guardian, who is responsible for the management and day-to-day operation of the guardianship program.

(8) "Guardian representative" means an individual assigned by a guardian to perform the functions of the guardian of the per-

son under s. 54.25 (1) and (2), Stats., or of the estate under ss. 54.19 and 54.20, Stats., or both, of a ward.

(9) "Successor guardian" has the meaning given in s. 54.01 (35), Stats.

(10) "Unincorporated association" is an organization organized under ch. 184, Stats.

(11) "Ward" has the meaning given under s. 54.01 (37), Stats.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10; reprinted to correct error Register June 2010 No. 654.

**DHS 85.04 Waivers and variances.** (1) DEFINITIONS. In this section:

(a) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS AND VARIANCES. The department may grant a waiver or variance of a requirement of this chapter to the corporate guardian if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any ward and meet any of the following conditions:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the ward.

(b) An alternative to a requirement, including a new concept, method, procedure or technique, other equipment, other personnel qualifications, or the conducting of a pilot project, is in the interests of better care or management.

(3) APPLYING FOR A WAIVER OR VARIANCE. A corporate guardian may apply for a waiver or variance at any time. Each request shall be made in writing to the department and include all of the following:

(a) The rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific proposed alternative action.

(d) The reasons for the request.

(e) Justification that a requirement under sub. (2) would be satisfied.

(f) Any other information requested by the department.

(4) DEPARTMENT DECISION. (a) The department shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

(b) The terms of a requested variance may be modified upon agreement between the department and the corporate guardian.

(c) The department may impose conditions on the waiver or variance which it deems necessary.

(d) The department may limit the duration of a waiver or variance.

**(5) HEARINGS.** (a) Denial of a request for a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

(b) The applicant shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

**(6) REVOCATION.** The department may revoke a waiver or variance for any of the following reasons:

(a) The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the wards.

(b) The guardian has failed to comply with the waiver or variance as granted.

(c) The guardian notifies the department in writing of the desire to relinquish the waiver or variance and be subject to the requirement previously waived or varied.

(d) Revocation is required by a change in law.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

### Subchapter II — Approvals

**DHS 85.05 Application.** In this chapter: Only a private nonprofit corporation or an unincorporated association may apply to the department for a determination that the corporation or association is suitable to perform the duties of a guardian. A corporation or association applying for such a determination shall apply to the department on an application form provided by the department. The applicant shall submit the completed application and all of the following to the department:

(1) The filed endorsement of the Articles of Incorporation submitted to the Wisconsin department of financial institutions, if applicable.

(2) A copy of the applicant's written grievance procedure for use by wards and interested parties.

(3) A business plan that includes staffing projections.

(4) A statement agreeing in writing to submit such reports and answer such questions as the department shall require in monitoring a corporate guardian.

(5) Any additional information requested by the department.

Note: Copies of the application form can be obtained at [http://www.dhs.wisconsin.gov/rl\\_DSL/CorptGuardn/CGforms.htm](http://www.dhs.wisconsin.gov/rl_DSL/CorptGuardn/CGforms.htm).

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.06 Criteria for approval.** The department may not approve an applicant until the department determines the applicant is fit and qualified to receive a determination of suitability to perform the duties of a corporate guardian. In determining whether an applicant is fit and qualified, the department may consider all of the following:

(1) Compliance history with Wisconsin's or any other state's licensing requirements and with any federal certification requirements, including any license revocation or denial.

(2) Arrest history and criminal record, including any of the following:

(a) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person.

(b) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance.

(c) Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons.

(d) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility or agency.

**(3) Financial stability,** including all of the following:

(a) Financial history and financial viability of the owner or related organization.

(b) Outstanding debts or amounts due to the department or other government agencies, including unpaid forfeitures and fines.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.07 Change of ownership.** (1) If a corporate guardian sells or otherwise transfers ownership of the corporation or the association, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the final transfer of ownership. This notice shall include the name and contact information of the new corporation.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.08 Corporate guardian closing.** (1) If a guardian is a corporation and the corporation's corporate status is revoked by the department of financial institutions or is voluntarily or involuntarily dissolved, or if the guardian is an unincorporated association and the association's status is voluntarily or involuntarily dissolved by the members or a court, or becomes inactive, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the corporation closes.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

### Subchapter III — Personnel

**DHS 85.09 Staff.** (1) **GUARDIANSHIP PROGRAM MANAGER.** (a) The guardian shall designate an employee who is 21 years or older and is fit and qualified under s. 50.03 (4), Stats., to manage its guardianship program.

(b) The guardianship program manager shall have a high school diploma or its equivalent and have at least 3 years of relevant experience.

(c) The guardianship program manager shall be responsible for the ongoing training and competency of all employees.

(d) Any change of guardianship program manager shall be communicated to the department and the county department designated under s. 55.02 (2), Stats., within 14 days following the effective date of the change.

(2) **OTHER EMPLOYEES.** (a) Except as provided in sub. (1) (a) each employee shall have the skills, education and ability to fulfill the employee's job requirements.

(b) An employee that has direct contact with a ward shall be at least 18 years old.

(3) **BACKGROUND CHECK.** At the time of hire, employment or contract and every four years after, the corporate guardian shall conduct and document a caregiver background check on each employee following the procedures in s. 50.065, Stats., and ch. DHS 12. A guardian may not employ or contract with a person

who has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s. 50.065, Stats., unless the person has been approved under the department's rehabilitation review process as defined in ch. DHS 12.

(4) **EMPLOYEE RECORDS.** A separate record for each employee shall be maintained, kept current, and include all of the following:

- (a) A written job description including duties, responsibilities and qualifications required for the employee.
- (b) Beginning date of employment.
- (c) Educational qualifications and relevant experience.
- (d) The results of the background checks required under sub. (3).

(e) Documentation of training.

(5) **VOLUNTEERS.** The guardian may use volunteers if the volunteer receives the orientation and training necessary to assure the health, safety and welfare of wards.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.10 Training.** (1) **INITIAL TRAINING.** Before performing the duties of a guardian, each guardian representative shall receive training that includes all of the following:

- (a) Job responsibilities.
- (b) Prevention and reporting of ward abuse, neglect and misappropriation of ward property.
- (c) Ward's rights and grievance procedures contained in chs. 54 and 55, Stats., s. DHS 85.13, and ch. DHS 94.
- (d) Information regarding the needs and services for each ward for whom the guardian representative is responsible.
- (e) Information about local resources available to meet the needs of wards.
- (f) Agency policies and procedures.

(2) **CONTINUING EDUCATION.** Each guardian representative shall complete 20 hours of training every 24 calendar months. The training shall be relevant to the guardian representative's job assignment and designed to increase the effectiveness of the employee to meet the needs of the wards served.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.11 Staffing.** (1) The guardian shall at all times have an adequate number of staff who are qualified either by training or by experience to meet the needs of its wards, including knowledge of service needs and resources for meeting service needs.

(2) The guardian representative shall be accessible to the ward and to other persons concerned about the ward's well-being.

(3) The corporate guardian shall have staff available at all times to respond to an emergency situation as defined in s. DHS 94.02 (14).

(4) The corporate guardian shall have staff accessible to the local planning agency or interagency mechanism designated under s. 55.02, Stats.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.12 Conflict of interest.** (1) The corporate guardian may not be subject to undue influence from any party.

(2) When the corporate guardian is a part of a larger organization, the corporate guardian shall have designated staff with independent decision-making authority about the guardianship program.

(3) Pursuant to s. 55.03 (1), Stats., a guardian may not be a provider of protective services or protective placement for its ward.

(4) No corporate guardian may accept a guardianship from a court in a county in which a member of the corporate guardian's board of directors or any employee or volunteer of the corporate guardian is a member or employee of the community board organized under s. 46.23, 51.42 or 51.437, Stats., or an employee of the county department of social services or human services or com-

munity programs or county board of supervisors or department of aging or a county court commissioner who hears petitions for guardianship or a member of a medicaid managed care organization.

(5) A corporate guardian may not profit from their ward.

(6) The guardian may not commingle personal or corporate funds with the funds of the ward. The guardian may consolidate and maintain wards' funds in accounts with other wards' funds if the guardian keeps separate and complete accounting of each ward's funds.

(7) Pursuant to s. 54.18 (3) (b), Stats., the corporate guardian may not lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(8) The corporate guardian may not engage in any financial transaction involving the ward's estate except as permitted under ch. 54, Stats., and this chapter.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

## Subchapter IV — Ward Services

**DHS 85.13 Rights of wards.** (1) **WARDS' RIGHTS.** Every ward shall have the right to all of the following in relation to the corporate guardian:

(a) Be treated with respect and dignity by the staff and volunteers of the corporate guardian.

(b) Be free from abuse, mistreatment, neglect and misappropriation of property.

(c) Confidentiality of health and personal information and records, except to the extent the corporate guardian may be authorized under the guardianship order to give informed consent to disclosure.

(d) Be informed of the services provided by the corporate guardian agency.

(e) Be consulted about decisions on the ward's behalf, to the extent the ward is capable.

(f) Have guardianship services provided in a way that is least restrictive as defined in s. 54.01 (18), Stats.

(g) Communicate freely with the advocates of the ward's choice.

(h) File a grievance or a complaint without retaliation.

(2) **COMPLAINTS.** Any person may file a complaint with a corporate guardian or the department regarding the operation of a corporate guardian. The department may investigate a corporate guardian as it deems necessary.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm>.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.14 Duties.** (1) The guardian representative shall meet with the ward within 14 days of the court appointment as corporate guardian. At the first meeting, the guardian representative shall complete all of the following:

(a) Explain to the ward the role of the guardian.

(b) Explain the guardianship determination and order including the rights addressed by the court. The guardian representative shall be familiar with the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained. The guardian representative shall explain to the ward the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained.

(c) Explain the applicable rights of the ward contained in ss. 54.18 (1), 54.25 (2), 54.42 and 55.10 (4), Stats., s. DHS 85.13 and the rules of the residence.



(d) Explain how to file a grievance and how to obtain a written copy of the grievance procedures for the living arrangement or for a service provider and the guardianship program.

(e) Explain how to file a complaint with the department and provide the ward with the department's toll-free complaint telephone number and the address and telephone number of the department's division of quality assurance.

**Note:** A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/hqaconsumer/HealthCareComplaints.htm>.

(2) The guardian representative shall notify relevant agencies and individuals of the appointment guardianship and shall provide letters of guardianship to the ward's service providers and others, as necessary.

(3) If a medical evaluation was not completed within the past year, the guardian shall obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate treatment provider.

(4) The guardian representative shall fulfill the duties of a guardian of person pursuant to ss. 54.18 (2) and (3) and 54.25 (1), Stats. The guardian representative shall fulfill the powers assigned by the court and shall exercise only those powers granted to the guardian representative by the court pursuant to s. 54.25 (2), Stats. A guardian representative shall be aware of and, if applicable, advocate for the ward's rights under ss. 50.09 and 51.61, Stats., and shall advocate for the least possible restrictions on the ward's liberty and exercise of constitutional and statutory rights, pursuant to ss. 54.18 (2) and 54.25 (2) (d) 3., Stats.

(5) A guardian representative of the estate shall fulfill the duties of a guardian of the estate pursuant to ss. 54.18 (2) and (3), 54.19, and 54.20 (1), Stats. A guardian representative shall fulfill the powers assigned by the court pursuant to s. 54.20, Stats., and shall seek court approval for those powers requiring court approval pursuant to s. 54.20 (2), Stats. In seeking compensation or reimbursement from the ward's funds, a guardian representative shall ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(6) A corporate guardian shall obtain court approval prior to receiving any compensation or reimbursement from the ward's funds, pursuant to s. 54.72, Stats. In seeking compensation or reimbursement from the ward's funds, a corporate guardian must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(7) For a guardian of person, the guardian representative shall have face-to-face contact with the ward at least once every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall visit the ward in their residence at least annually.

(8) For guardian of estate, the guardian representative shall have personal contact every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall have face-to-face contact with the ward at least annually.

**History:** CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register July 2015 No. 715.

**DHS 85.15 Records.** (1) The corporate guardian shall maintain a separate file for each ward including all of the following information and documents as applicable:

(a) Name, date of birth, address, telephone number, and social security number. Guardians of person shall also maintain information regarding the ward's medical coverage, physician, diagnoses, medications, and allergies to medications.

(b) A current photograph of the ward.

(c) All relevant legal documents involving the ward.

(d) Advance directives.

(e) A list of key contacts.

(f) A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.

(g) Documentation of all ward and collateral contacts, including the date, time, and activity.

(h) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.

(i) A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.

(j) Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.

(k) Documentation of the ward's known values, preferences, and wishes regarding medical and other care and services including all advanced directives made prior to guardianship, and financial matters and other services.

(L) A personal and social history of the ward including a family history.

(2) If guardianship is transferred, the corporate guardian shall transfer the original record required in this section to the successor guardian.

**History:** CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

## Subchapter V — Withdrawal of Approval

**DHS 85.16 Actions affecting approval.** (1) If at any time the department determines that a corporate guardian no longer meets the criteria under this chapter, the department may withdraw its approval upon 30 day written notice to all of the following:

(a) Corporate guardian.

(b) All courts that assigned the corporate guardian's guardianships.

(c) The ward.

(d) The ward's family.

(e) Any other interested parties.

(f) The county department designated under s. 55.02, Stats.

(2) The corporate guardian shall comply with the provisions in s. DHS 85.08 (2) regarding a corporate guardian closing.

**History:** CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

**DHS 85.17 Appeal of decisions.** Any party adversely affected by a decision of the department about the suitability of a private non-profit corporation or an unincorporated association for corporate guardianship may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats. The request for a hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when the request is received by that division.

**Note:** To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707.

**History:** CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

Jim Doyle  
Governor



1 WEST WILSON STREET  
P O BOX 2969  
MADISON WI 53701-2969

Karen E. Timberlake  
Secretary

**State of Wisconsin**  
Department of Health Services

Telephone: 608-266-8481  
FAX: 608-267-0352  
TTY: 888-241-9432  
dhs.wisconsin.gov

**Date:** June 9, 2010 DQA Memo 10-015  
**To:** Non-profit Corporate Guardians  
**From:** Alfred C. Johnson, Director  
Bureau of Technology, Licensing & Education  
**Via:** Otis Woods, Administrator  
Division of Quality Assurance

**Implementation of the Revised Chapter DHS 85, Wisconsin Administrative Code,  
Relating to Non-Profit Corporate Guardians and Unincorporated Associations  
Effective June 1, 2010**

On June 1, 2010, significant changes to Wisconsin Administrative Code, ch. DHS 85, took effect establishing standards for the approval of non-profit corporate guardians or unincorporated associations suitable to perform the duties of guardian of a person, or of an estate, or both.

**This memo contains important information on the following topics:**

- Implementation
- Current standard of practice
- Caregiver background checks
- Policies and procedures
- Approval process
- Training

**Implementation**

Effective June 1, 2010, non-profit guardians and unincorporated associations will be expected to be in compliance with the new requirements in Chapter DHS 85. The Department will use reasonable regulatory action in fulfilling its mandate to assure that the health, safety, and welfare of wards being served by the non-profit guardians and unincorporated associations are protected and safeguarded.

**Current Standard of Practice**

Significant new provisions have been added to Chapter DHS 85 in the areas of staff qualifications, staff training, continuing education, caregiver background checks, duties and powers of the guardian, rights of wards, how to file a complaint, contacts with wards, wards' records, and conflict of interest standards. These requirements reflect the current standards of practice for non-profit corporate guardianships. **NOTE:** It is the responsibility of each corporate guardian to review and become familiar with the specific language and requirements that are identified in the newly-revised chapter DHS 85.

**Caregiver Background Checks**

Chapter DHS 85 requires the corporate guardian to conduct and document a caregiver background check completed on each employee, at the time of hire or contract and every four years thereafter, who has contact with wards following the procedures found in s.50.065, Stats, and Chapter DHS 12. A corporate guardian may not employ or contract with a person who has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s.50.065, stats., unless the person has been approved under the Department's rehabilitation review process as defined in ch. DHS 12. Please access the following website for information on Wisconsin Caregiver Background Checks:

<http://dhs.wisconsin.gov/caregiver/StatutesINDEX.HTM>

**Policies and Procedures**

Chapter DHS 85 now requires corporate guardians to develop and maintain policies and procedures in the areas of abuse and neglect, misappropriation of property, grievance procedure for use by wards and interested parties, and complaint and grievance investigation.

**Approval Process**

Chapter DHS 85 now establishes standards for the guardian application process, and criteria the Department uses to determine whether a person is fit and qualified to operate as a corporate guardian. Chapter DHS 85 also creates notification and other provisions a corporate guardian must follow when changing ownership or ceasing operations that result in closing the corporate guardian agency.

**Training**

A training session on the new DHS 85 will be held at the Wisconsin Guardianship Association's Educational Conference on September 15, 2010, at the Kalahari Resort Convention Center, Wisconsin Dells. The following website will be available as of June 14, 2010:

<http://www.wisconsin-guardianship-association.com> . Please check the website for further information regarding the educational conference.

**Resources**

You may access the following websites for information on guardianship associations, Register in Probates and resources:

- <http://www.legis.state.wi.us/statutes/Stat0054.pdf>
- <http://www.cwagwisconsin.org/elder-law-center/guardianship-support-center/>
- [http://www.guardianship.org/reports\\_and\\_updates.htm](http://www.guardianship.org/reports_and_updates.htm)
- <http://wripa.org/>

If you have any questions about this information, please contact: Dinh Tran at (608) 266-6646 or [dinh.tran@wi.gov](mailto:dinh.tran@wi.gov) or Deb Bursaw at (608) 267-2838 or [deb.bursaw@wi.gov](mailto:deb.bursaw@wi.gov).

cc: Registers in Probate  
BOALTC  
DRW  
WGA Board Members

**DHS 85, Wisconsin Administrative Code**



# WINGS Wisconsin

WINGS Wisconsin (Working Interdisciplinary Networks of Guardianship Stakeholders) is a group of professionals dedicated to reviewing and improving the guardianship systems in Wisconsin.

## Wisconsin Guardianship Resources

Updated 04/2017

### WINGS Wisconsin Publications

- ◆ [Alternatives to Guardianship](#)

### Available Webcasts

- ◆ Guardianship Training Series – “[Guardianship 101](#)” – June 2015
- ◆ Guardianship Training Series – “[A Day in the Life of a Corporate Guardian](#)” – June 2015
- ◆ Guardianship Training Series – “[Probate Court Expectations of a Guardian](#)”
- ◆ [WGA Educational Seminar](#) – “Preserving the Rights of Individuals Under Guardianship;” “End of Life Panel;” and “Financial Abuse” – September 2016

### Online Resources

- ◆ [Circuit Court Access for guardianship forms](#)
- ◆ [WI Guardianship Support Center \(GWAAR\)](#): Consumer publications about a variety of guardianship and other legal decision-making topics
  - [Roles and Responsibilities of Guardians, APS and MCO](#)
- ◆ [WI State Law Library](#): Variety of legal resources, including some county forms
- ◆ National Guardianship Association (NGA) and Wisconsin Guardianship Association (WGA): Information about national and state guardian standards
  - [NGA](#)
  - [WGA](#)
  - [WGA Standards of Practice](#)
- ◆ [National Adult Protective Services Association \(NAPSA\)](#)
- ◆ Waisman Center for information about youth transitioning to adulthood and guardianship:
  - [Youth Transition Hub](#)
  - [General Information](#)
- ◆ [Wisconsin Department of Health Services](#)
  - [Corporate Guardians](#)
  - [Adult Protective Services](#)
- ◆ [WI Veterans Services Office Locator](#)

## Published Resources

- ♦ [“Landmark Guardianship and Adult Protective Services Reforms Signed into Law,”](#) Betsy Abramson and Jane Raymond. *Wisconsin Lawyer*, vol. 79, number 8.
- ♦ *“Understanding Guardianships: A Handbook for Guardians,”* (2013). To order, contact (800) 728-7788 or (608) 257-3838 or go to [www.wisbar.org](http://www.wisbar.org).
- ♦ Maren Beerman and Gretchen Viney, *Guardianship and Protective Placement for the Elderly in Wisconsin*, (3d ed. 2012). To order, contact (800) 728-7788 or (608) 257-3838 or go to [www.wisbar.org](http://www.wisbar.org).
- ♦ [Guardianship of Adults Handbook](#), DHS, (2011).
- ♦ *“Guide to Elder Law and Benefits in Wisconsin,”* (2015). To order go to <http://www.gwaar.org/guide-to-elder-law-and-benefits-in-wisconsin.html>.
- ♦ *“The Guardian,”* Wisconsin Guardianship Support Center, GWAAR, published quarterly.

## Additional Information

- ♦ [Regional Center for Children and Youth with Special Health Care Needs](#)
- ♦ [Local Registers in Probate](#)
- ♦ Aging & Disability Resource Centers: [find your county ADRC here](#)

## Advocacy Resources

- ♦ [Board on Aging and Long Term Care](#): Ombudsman 1-800-815-0015
- ♦ [Disability Rights Wisconsin](#): 800-928-8778

## Legal Resources

- ♦ [WI Guardianship Support Center](#): 855-409-9410 or [guardian@gwaar.org](mailto:guardian@gwaar.org)
- ♦ \*Children’s Hospital of Wisconsin, Inc. Guardianship Clinic and Milwaukee County Guardianship Assistance Program: (414) 266-3465
- ♦ \*[Disability Rights Wisconsin](#)

\*Eligibility for services may be conditioned upon program specific criteria such as the individual’s location within the state, income, etc.