



WISCONSIN DEPARTMENT
of **HEALTH SERVICES**

Residency Manual

2024

(Rescinds and replaces DDES Numbered Memo Series 2007-01, DLTC Numbered Memo 2011-06 and DMHSAS Numbered memo 2011-09)

P-03623 (06/2024)

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I. Introduction

The Residency Manual contains the criteria, based on both statutes and policy, to determine the county of residency for individuals over the age of 17 who are in need of services under Wis. Stat. chs. 46, 49, 50, 51, 54, and 55. The county of residency is the county responsible to provide services to the individual. Residency determinations issued by the Department of Health Services (DHS) will be based on the criteria herein, on other applicable statutes, and on precedents established in other formal DHS residency determinations and court decisions.

This manual is organized into four sections. The first section defines legal residency and the four criteria that must be met in order for legal residency to be established. The second and third sections describe the two different forms of residency determinations (Wis. Stat. § 51.40 residency determinations and administrative residency determinations). The fourth section explains how residency disputes can be resolved.

II. Definitions

"Agency of a county department" means a public or private organization with which a county department contracts for provision of services under Wis. Stat. chs. 46, 51, 54 or 55. Wis. Stat. § 51.40(1)(a).

"Arrange or make placement" means perform any action beyond providing basic information concerning the availability of services, facilities, or programs in a county to an individual or the individual's family. Wis. Stat. § 51.40(1)(b).

"Approved treatment facility" means any publicly or privately operated treatment facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons. Wis. Stat. § 51.01(2).

"Capable of indicating intent" means able to express by words or other means where you want to live. Wis. Stat. § 51.40(1)(c).

"Care Management Organization" means managed care organization that is under contract with the department to provide the Family Care benefit under Wis. Stat. § 46.286, the Family Care Partnership benefit described under Wis. Stat. § 49.496 (1) (bk) 3., or the benefit under the program of all-inclusive care for the elderly under 42 USC §§ 1395eee or 1396u-4.

"County department" means a county department under Wis. Stat. §§ 46.23, 51.42 or 51.437. Wis. Stat. § 51.40(1)(d).

"County of responsibility" means the county responsible for paying for services under Wis. Stat. ch. 46, 51 or 55 for an individual. Wis. Stat. § 51.40(1)(e).

"Facility" means a place, other than a hospital, that is licensed, registered, certified, or approved by DHS, a county, or a Managed Care Organization (MCO) under Wisconsin Statute. See Wisconsin Medicaid Standards for more specifics.

“Found principle”- For mental health services under § 51.42(1)(b), means county liability for care and services purchased through or provided by a county department of community programs based on the client's county of residence, except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, “emergency services” includes those services provided under the authority of § 55.05(4), 55.06(11)(a), 51.15, 51.45(11)(a) or (b) or (12), 55.13, or 55.135 for not more than 72 hours.

“Found principle”- For developmental disabilities under § 51.437(4)(c), means county liability for care and services purchased through or provided by a county department of developmental disabilities services based on the client's county of residence, except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, “emergency services” means those services provided under the authority of § 55.05(4), 55.06(11)(a), 51.15, 55.13, or 55.135.

“Foreign guardianship” means a guardianship case issued by a state other than this state. Wis. Stat. § 54.01(9k), (9m).

“Guardian” means a guardian of the person appointed by a court under Wis. Stat. ch. 54. See Wis. Stat. § 54.01(10).

“Incapable of indicating intent” means one of the following:

- The status of an individual who has had a guardian.
- The status of an individual for whom there is substantial evidence, based on documentation from a licensed physician or psychologist who has personally examined the individual and who has expertise concerning the type of mental disability evidenced by the individual, that the individual is incapable of indicating intent.

Wis. Stat. § 51.40(1)(g).

“Incapacity” means the inability of an individual to effectively receive and evaluate information or to make or communicate a decision with respect to the exercise of a right or power. Wis. Stat. § 54.01(15).

“Individual found incompetent” means an individual who has been adjudicated by a court as meeting the requirements of § 54.10(3). Wis. Stat. § 54.01(16).

“Inpatient facility” means a public or private hospital or unit of a hospital that provides 24-hour care and has as its main purpose the diagnosis, treatment, and rehabilitation of mental illness, intellectual and/or developmental disability, or substance abuse. Wis. Stat. § 51.01(10).

“Interested person” See Wis. Stat. § 54.01(17).

“Involuntary commitment for treatment” See Wis. Stat. § 51.20.

“Nursing home” means a place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care and skilled nursing services. “Nursing home” does not include any of the following:

- A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual.
- A hospice, as defined in s. 50.90 (1), that directly provides inpatient care.

- A residential care apartment complex.
- A facility that is operated by DHS.

“Residence” means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain; Wis. Stat. § 49.001(6). See Section III for further discussion on how “residence” or “legal residence” is established in Wisconsin.

“State facility” means a state mental health institute, center for the developmentally disabled, or prison as specified in Wis. Stat. § 302.01, or a facility operated directly by DHS or the Department of Corrections; Wis. Stat. § 51.40(1)(j).

“Voluntary” means a person is free to choose, if competent, or by choice of a guardian if the person has been held incompetent by a court; Wis. Stat. § 49.001(8).

III. Legal Residency in Wisconsin

With the exceptions noted below, county agencies are responsible for providing services to legal residents of their county. The only exceptions to the principles of county responsibility based on a client’s legal residence are for emergency services under Wis. Stat. chs. 51 and 55 based on the “found principle,” and certain Wis. Stat. ch. 48 services ordered by the juvenile court to be provided by the agency that is appointed as legal custodian of a child; *see* Wis. Stat. §§ 48.02(12) and 48.57(1)(a) and (b).

Legal residence is defined in Wisconsin statutes as follows:

“Residence” means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain.

There are four criteria in the statutory definition of **“residency”** that must be met in order for an individual to establish residency. **All four criteria must occur simultaneously.** If any one of the four criteria does not apply, legal residency has not been established.

A. Physical Presence

Physical presence in a county creates a rebuttable presumption that the individual intends to reside there. This presumption can be overcome by a preponderance of evidence to the contrary; the physical presence presumption places the burden on the county where the individual is located. If the individual is covered by Wis. Stat. § 51.40, the provisions in that section may overcome the physical presence presumption.

B. Voluntary

The concurrence of all four criteria must be voluntary on the part of the individual or her or his legal guardian. Examples of physical presence not being voluntary include, but are not limited to, placement pursuant to a court order, such as protective placement, or placement pursuant to the conditions of probation or parole supervision.

Placement in a facility for care or treatment authorized by a county 51.42/437 department in another jurisdiction, or by a care management organization into another county, does not change

the individual's legal residence while the individual is receiving care or treatment. *See*, Wis. Stat. §§ 51.22(4) and 51.40(2) (a) 2.

Placement for care or treatment in Wisconsin by another state, or a guardian established in another state, does not automatically change the individual's legal residence to Wisconsin. However, a guardian/conservator may either petition to transfer the guardianship/conservatorship to Wisconsin under Wis. Stat. §53.32, or they may register it according to Wis. Stat. §§ 53.41 (guardianship of the person) or 53.42 (guardianship of the estate). The standard court form for registration must be completed.

C. Intent to remain

Intent to remain has been interpreted to mean "to live in that county for the foreseeable future." An individual, or their guardian on behalf of their ward, must have the intent to remain, for the foreseeable future, in the county where they are physically present. Generally, intent to remain may be expressed verbally by the individual or their guardian. However, a written expression of intent by an individual's legal guardian is preferable when the individual has a legal guardian and the individual's county of residency is in dispute.

An individual may relocate to a facility or nursing home in a different county, without the involvement of the originating county. The individual may express the intent to return to the original county if services or treatment becomes available there or if the services or treatment are no longer required. In such case, the individual has not expressed the intent to remain in the new location/county, and county of residence does not change.

No specific time period must have elapsed to establish the intent to remain for Wisconsin residency. Situations such as seasonal employment in Wisconsin, an extended vacation, temporarily caring for a sick relative/friend, or for educational/training purposes do not alone qualify as having the intent to remain. Some examples of facts that may be considered as indicators of intent to remain include the location from which the individual files tax returns, maintains financial accounts, has a driver's license, or votes.

D. Place of Fixed Habitation

Examples of a place of fixed habitation include a home, apartment, condominium, residential hotel, or a mobile home on a fixed site. It may also include a nursing home, an adult family home (AFH), a community-based residential facility (CBRF), or other supervised residential facility when the individual intends to live there for the foreseeable future because they have long-term care needs and the services of the facility are needed to meet those needs. A motel, hotel (except a residential hotel), rooming house, or college dormitory are generally not considered places of fixed habitation. However, in limited situations a motel, hotel, or rooming house may be considered a place of fixed habitation if the individual lives there voluntarily and intends to remain there for the foreseeable future.

A place of fixed habitation would not include a car or other motorized vehicle. Nor would it include an emergency shelter for the homeless or temporary shelter for victims of domestic violence because they are, by definition, temporary shelters. Nursing homes, CBRFs, and other supervised residential facilities where an individual's stay is temporary to address acute care needs are also not considered places of fixed habitation.

When all four criteria are met simultaneously, the individual becomes a resident of Wisconsin and the respective county. There is no waiting period before an individual establishes legal residency in Wisconsin.

Once an individual establishes legal residency in a Wisconsin county, they do not lose that residency until they establish legal residency in another Wisconsin county or in another state. Even in extreme situations where an individual has been homeless, perhaps for years, they retain their legal residency in the county and state where they last established legal residency before becoming homeless.

IV. Wisconsin Stat. § 51.40 Residency Determinations

Wisconsin Stat. § 51.40 applies only to a determination of residency for individuals who are 18 or older and who have an intellectual and/or developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacity, who are living in any facility.

Wisconsin Stat. § 51.40 identifies five main means to determine residency for individuals identified above:

- Court-ordered commitment, protective placement, or protective services.
- Placement by a county or care management organization.
- Individuals in state facilities.
- Individuals in nursing homes.
- Guardian's intent.

Wisconsin Stat. § 51.40 does not apply to:

- Other residents in a facility who do not have an intellectual and/or developmental disability, a serious and persistent mental illness, degenerative brain disorder, or other like incapacity.
- Individuals under age 18.
- Individuals living outside a facility (for example, in a private home or apartment).

For individuals not covered by Wis. Stat. § 51.40, the determination of legal residence is based on the definition of residence under Wis. Stat. §§ 49.001(6) and (8) discussed in [Section V](#).

A. Basic Provisions of Wis. Stat. § 51.40

- Several provisions in Wis. Stat. § 51.40 set a point in time at which an individual's residence is conclusively established. *See* Wis. Stat. §§ 51.40(2)(b)1., (b)2.ag., bg., eg., and fg.
- Other provisions determine who can make the determination (for example the guardian) and how residency is established for individuals in nursing homes. *See* Wis. Stat. §§ 51.40(2)(f) and (2)(b)cg.
- Still other provisions cite court (legal) actions or county agency actions as determinative. *See* Wis. Stat. §§ 51.40(2)(a)1. and 2.
- For those cases where a specific point in time is not solely determinative, the statutes refer to "...the county in which the individual has (or had) residence at a specific time." Thus, careful analysis of Wis. Stat. § 49.001(6) and (8), as applied to Wis. Stat. § 51.40, is critical.
- Wisconsin Stat. § 51.40 applies to both competent individuals as well as those adjudicated incompetent.

B. Determination Criteria

Wis. Stat. § 51.40(2) specifies the conditions and circumstances to make residency decisions.

1. Court commitment

Wis. Stat. § 51.40(2)(a)1. states that if an individual is under a court-ordered commitment under Wis. Stat. ch. 51, or a protective placement or protective services under Wis. Stat. ch. 55, the individual remains a resident of the county where they resided at the time the initial commitment or initial order for protective placement or protective services is made. If the court makes no specific finding of a county of residence, the individual is a resident of the county where the court is located. After notice, including notice to the corporation counsel of each affected county by certified mail, after an opportunity to be heard has been provided to all affected counties and parties, and if there is no objection, the court may make a specific finding of a county of residence. If any affected county or party objects to the court's proposed finding, a county or party may request DHS to make a determination. Wisconsin Stat § 51.40(2)(a)1. states that any transfer of venue may be suspended until the DHS determination is final.

2. Placement by a county

Wis. Stat. § 51.40(2)(a)2. states that except for the provision of emergency services, if a county department, an agency of the county department, or a care management organization places or makes arrangements for placement of the individual into a facility, the sending county is the person's county of residence.

Any agency of the county department is deemed to be acting on behalf of the county in placing or making arrangement for placement. Likewise, any agent of the care management organization is deemed to be acting on behalf of the care management organization in placing or marking arrangement for placement. Placement of an individual by a county department or care management organization in a facility outside the jurisdiction of the county does not transfer the individual's legal residence to the county where the facility is located.

If a resident of a county is physically present in another county, and is in need of immediate care, the county in which the individual is present may provide for their immediate needs under Wis. Stat. chs. 51, 54, or 55 without becoming the individual's county of residence.

3. State facilities

Wisconsin Stat. § 51.40(2)(b)1 states that "an individual who is in a state facility is a resident of the county in which they were a resident at the time the admission to the state facility was made.

4. Nursing homes

The following are presumptions regarding the county of residence of an individual in a nursing home that may be overcome by substantial evidence that clearly establishes another county of residence:

- a. Admissions after December 1, 2006: Wis. Stat. § 51.40(2)(b)2.ag states "an individual who was admitted under § 50.04(2r) after December 1, 2006, is a resident of the county that approved the admission under § 50.04(2r)."
- b. Admissions prior to December 1, 2006:
 - 1) An individual residing in a nursing home on December 1, 2006, is a resident of the county in which they are physically present (that is the county in which the nursing

home is located unless another county accepts the individual as a resident); Wis. Stat. § 51.40(2)(b)2.bg.

- 2) If the individual is receiving short-term care and services, or sought services outside of their county of residence, to meet an immediate need and had established residence in a county prior to entering the nursing home, and the individual indicates intent to return the county of residence, the individual remains a resident of that county regardless of nursing home admission in another county.
 - 3) If the individual is incapable of indicating intent as determined by the county department, has no guardian, ordinarily resides in another county and is expected to return to that county within one year, the individual is a resident of that county; Wis. Stat. § 51.40(2)(b)2.dg.
 - 4) If another county has accepted responsibility for or provided services to the individual prior to December 1, 2006, the individual is a resident of that county. Although not specifically referenced in Wis. Stat. § 51.40, the provision of Chapter 49, "Income Maintenance Services," does apply per Wis. Stat. § 46.22(1) (b), "County Social Services, Powers and Duties." However, application for a ForwardHealth card does not by itself determine residency because eligibility for Medicaid is frequently determined in the county where the person is placed, not necessarily their county of residence.
 - 5) If the individual is incapable of indicating intent, was living in another county but not in a nursing home or state facility on December 1, 2006, **or** under circumstances that established residence in that county after December 1, 2006, **and** that county was the last county where the individual had residence prior to entering a nursing home or state facility, the individual is a resident of that county.
- c. Non-Wisconsin residents: See Section V. D. for procedures regarding non-Wisconsin residents.

5. **Guardian's authority to declare county of residence**

A guardian may declare any of the following, under any of these conditions:

- a. The ward is a resident of the guardian's county of residence, if none of Section IV. B.1 applies. If the guardian's ward is in a facility and is incapable of indicating intent, and if the guardian is a resident of the county in which the facility is located or states in writing that the ward is expected to return to the guardian's county of residence when the ward can be released from the facility or needed care and services can be obtained in the guardian's county of residence, the ward is a resident of the same county as the guardian; Wis. Stat. § 51.40(2)(f)1.
- b. The ward is a resident of the county in which the ward is physically present, if Section IV.B.1. through 4. do not apply and if all of the following apply; Wis. Stat. § 51.40(2)(f)2.:
 - 1) The ward's presence in the county is voluntary.
 - 2) There is no current order under Wis. Stat. ch. 55 in effect with respect to the ward, and the ward is not under any involuntary commitment order to the Department of Corrections or to a county other than the county in which the ward is physically present.
 - 3) The ward is living in a place of fixed habitation.
 - 4) The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.
- c. The guardian may declare a specific county to be the ward's county of residence, regardless of a prior residency determination, if, for good cause, that selection is in the ward's best interests. In this instance, the guardian must file a written statement with the

court having jurisdiction over the guardianship and the court must approve the guardian's selection of county of responsibility. Notice and an opportunity to be heard must be given to any affected county or interested party; Wis. Stat. § 51.40(2)(f)3.

Note: The rights of a guardian to affect the placement of a ward are limited if the ward is covered by Wis. Stat. § 51.40. These restrictions were placed into law to specifically provide added protection to this vulnerable population.

C. Change of Venue

When a court is considering a change of venue, the county to which the venue is to be transferred must be notified. This notification shall allow sufficient time for the county to which venue may be transferred to become aware of the facts of the case and to present their own case. For Wis. Stat. ch. 55 cases, 30 days is considered a reasonable period of time. Wisconsin Stat. ch. 51 cases must be acted on within 14 days; therefore, seven days is considered a reasonable period of time.

V. Administrative Determinations (not covered by Wis. Stat. §51.40)

The criteria for administrative residency determinations were developed in 1980 by a Central Office Project Experience (COPE) Committee appointed by the Secretary of the Department of Health Services. Participants on this committee consisted of county representatives, client advocacy groups, and state representatives. The COPE Committee recommended that a policy be developed to more equitably resolve questions on county responsibility for funding human services in situations where Wis. Stat. § 51.40 does not apply. The criteria that resulted from that effort are incorporated in this manual.

A. County Responsibility to Provide Services

Wis. Stats. §§ 51.42, 51.437, and 46.23 state that county social services departments and community boards are required by law to provide services to the residents of their counties within available state, federal, and local match dollars. The county board of supervisors has the primary responsibility for the care, treatment, and well-being of individuals with mental illness, intellectual and/or developmental disability, and/or substance abuse issues who reside in the county, and for ensuring individuals in need of emergency services found within the county receive immediate care. County liability for care and services is based on the individual's county of residence, except for emergency services, where fiscal responsibility is based on the "found" principle. In emergency cases, fiscal liability is generally limited to 72 hours (plus intervening weekends and legal holidays) of care and services.

B. County Responsibilities: Commitments and Admissions

Wis. Stat. § 51.22 addresses commitments to, and responsibilities of, 51.42/437 boards. Except for inmates committed to DHS per Wis. Stat. § 51.20(13)(a)4. and non-Wisconsin residents under Wis. Stat. § 51.20(13)(a)5., persons committed under Wis. Stat. ch. 51 shall be committed to the county department of the person's county of residence under Wis. Stat. § 51.42 or 51.437. Likewise, voluntary admissions under Wis. Stat. § 51.10 (adults), §51.13 (minors), and §51.45 (alcoholism) are made through the 51.42/437 department serving the person's county of residence. The county shall authorize placement in an appropriate facility for care, custody, and treatment.

The county to which the individual is committed shall provide the least restrictive treatment alternative appropriate to the individual's needs, and guide the individual's movement through all

appropriate and necessary treatment components to assure continuity of care; Wis. Stat. § 51.22(5).

Admissions to state, local, or private facilities through counties are made in accordance with Wis. Stat. §§ 51.42(3) (as) or 51.437(4rm) (a). Non-Wisconsin residents are only admitted to DHS facilities in accordance with Wis. Stat. § 51.22(3).

C. Determination Criteria

1. Court orders

If an individual is under a court-ordered commitment under Wis. Stat. ch. 51, or a protective placement or protective services under Wis. Stat. ch. 55, the individual remains a resident of the county where they resided at the time the initial court order is made.

When an individual voluntarily moves to another county while under involuntary outpatient civil commitment to a county, and the individual remains a proper subject of continued commitment and supervision under § 51.20, the county to which the individual is civilly committed retains responsibility for the person's services and supervision unless and until venue for the individual is transferred to the receiving county or until the individual is no longer a proper subject of continued commitment. There is no provision in statute that authorizes discharge of an individual's involuntary civil commitment when they continue to be a proper subject of commitment and supervision during the term of that commitment. However, it would be proper to seek the dismissal of a commitment if the individual moves to a location outside the state.

Note: If the receiving county disputes the individual's competency to make a voluntary move, or the receiving county disputes the sending county's discharge criteria, informal negotiations should be pursued prior to requesting a DHS-assisted residency determination.

2. Placement by a county

Except for the provision of emergency services, if a county places or makes arrangements for placement of an individual into a facility or residential setting the originating county is the person's county of residence. Placement of an individual in a facility or residential setting outside the jurisdiction of the originating county does not transfer the individual's legal residence to the county in which the facility or residential setting is located. However, if that county's involvement with the placement ends, a determination using the other decision criteria as to whether or not the county of residence may change should occur.

3. Placement by Care Management Organization

For adults in Medicaid-funded long-term care programs, a move to a different county may involve a change in the county of residence. All long-term care programs are voluntary, and a competent individual makes decisions about their care plan and the services they will receive. If the member or guardian has requested to move to a different county, the county of responsibility will likely change. However, if the care management organization has initiated a move to a different county (e.g. due to a change in the member's condition, loss of a caregiver or provider, to assure the least restrictive setting, to provide a more cost-effective option, or another reason to best meet the member's needs), the county of responsibility likely does not change.

Unless the guardian declares the intent to change residence under Wis. Stat. § 51.40(2)(f), the county of residence does not change for individuals in long-term care programs who:

- Have legal guardians **and** are under a protective services or protective placement order.
- Are under a Chapter 51 mental health commitment.

4. **State facilities**

Individuals who do not meet the criteria of Wis. Stat. § 51.40 (Section IV), and who are currently institutionalized in a state-operated facility, shall be presumed to be residents of the county that is fiscally responsible for that individual as indicated on institutional records and commitment orders. If such documentation does not exist, then the county where the individual had established residency at the time they were admitted to the state-operated facility is the county of responsibility.

5. **Nursing Homes**

- An individual who is voluntarily admitted to a nursing home after December 1, 2006, is a resident of the county in which they are physically present, unless the individual established residence in another county prior to entering the nursing home with the intent to return to that county. An individual admitted to a nursing home under Wis. Stat. § 50.04(2r) is a resident of the county that recommended the admission via signature on the County Review of Nursing Home, IMD or ICF/MR Referral form, F-20822.
- An individual admitted to a nursing home prior to December 1, 2006, is a resident of the county in which they are physically present (that is the county in which the nursing home is located), unless another county accepts the individual as a resident or the individual established residence in another county prior to entering the nursing home with the intent to return to that county.
- An individual admitted under Wis. Stat. § 50.04(2r) after December 1, 2006, is a resident of the county that approved the admission. This applies to a nursing home that is not certified as a provider of medical assistance or is an ICF-IID or an institution for mental disease (IMD). These facilities may not admit a resident who has a developmental disability or who is under age 65 and has a mental illness unless the county department of the individual's county of residence has recommended the admission.

6. **Guardian Authority**

The guardian may declare county of residence under the conditions identified in state statute.

The individual is a resident of the guardian's county of residence if the individual is in a facility, incapable of indicating intent, and the guardian is a resident of the county in which the facility is located; or the guardian states in writing that the individual is expected to return to the guardian's county of residence after the purpose of admission to the facility (care and services) is accomplished.

The individual is a resident of the county where they are physically present if the following apply:

- The individual is not under a Wis. Stat. ch. 51 or 55 (mental health commitment, protective placement, or protective services) court order from a different county or any Department of Corrections order.
- The county agency or care management organization has not placed, or made arrangements for placement of, the individual.
- The individual is living in a place of fixed habitation.
- The guardian states in writing that it is the individual's intent to remain in the county for the foreseeable future.

The guardian may declare county of residence under the conditions identified in § 51.40(2)(f). Court action and approval (i.e. change of venue) is required to change county of residence.

If the guardian intends to change the individual's county of residence, the guardian may request a change of venue with the court that has jurisdiction over the guardianship. When a request for change of venue is submitted, the receiving county must be notified and may object to the transfer. A change of venue approved by the court will change the county of residence and responsibility. Counties should be aware of these requests and carefully consider these decisions with the court. A denial of venue transfer should not prevent a necessary move; it simply keeps the jurisdiction of the guardianship and protective placement (if there is one) with the original county and court.

D. Admission of Non-Wisconsin Residents to Nursing Homes and Other Residential Facilities.

For many years it was often difficult for individuals living in other states to be admitted to nursing homes and other facilities in Wisconsin, particularly when they might later need community services. In 1997, the 7th Circuit Court of Appeals held that Wisconsin statutes imposed an unconstitutional barrier on disabled persons who wanted to be admitted to facilities in Wisconsin. *See Bethesda Lutheran Homes v. Leean*, 122 F. 3rd 443 (7th Cir. 1997).

In 2005, the Wisconsin Supreme Court issued a decision addressing similar issues in the case *In the Matter of the Guardianship of Jane E. P.*, 283 Wis. 2d 258 (2005). The Supreme Court adopted specific procedures enabling guardians to transfer guardianship cases from other states ("foreign guardianships") to Wisconsin courts and to process petitions for protective placement of the guardians' wards into facilities for treatment in Wisconsin.

By passage of 2005 Wisconsin Act 387, the Wisconsin Legislature adopted (with slight modification) the decision of the Wisconsin Supreme Court in *Jane E.P.* These new statutes appear in Wis. Stat. §§ 54.30(1), 54.34(3), and 54.38(1m). They were effective December 1, 2006.

1. The petition for guardianship and protective placement in Wisconsin must include a certified copy of certain guardianship papers and other information from the court in the other state. These court procedures are quite complex. Wisconsin county agencies involved in cases of this nature should consult the county corporation counsel office.
2. Wisconsin county departments of human services, social service, community programs, and developmental disabilities services should accept, consider, and approve requests from non-Wisconsin residents on the same basis, and apply the same clinical and programmatic criteria, as residents of the county when considering approval of admissions to ICF-IIDs, IMDs, and nursing homes under Wis. Stat. § 50.04(2r).
3. DHS has established policy and funding for non-Wisconsin residents who are placed under a § 51.15 emergency detention in an approved psychiatric inpatient program. Refer to DHS [Regional Area Administration](#) for further instructions on the handling of these cases and the application for funding.

In April 2018, 2017 Act 187 created Wis. Stat. Chapter 53, Uniform Adult Guardianship Jurisdiction. This Act created a new chapter in the statutes establishing procedures for the transfers of guardianships into and out of Wisconsin from and to other states and foreign nations.

VI. Resolution of Disputes

A. Informal Mechanisms

Counties or care management organizations must first attempt to resolve residency disputes informally among themselves. The DHS [Regional Area Administration](#) office staff should be contacted as needed to consult.

B. Formal Residency Request Process

1. Under Wis. Stat. § 51.40(2)(g)1., "An individual, an interested person on behalf of the individual, or any county may request that the department make a determination of the county of responsibility of the individual." This should occur only after the affected counties attempt to resolve the matter informally. Requests should be emailed to DHS Area Administration at dhsareaadmin@dhs.wisconsin.gov.
2. The letter should state the basis for the request, the statutory authority to request a residency determination, background information about the individual and their family, and any documentation explaining how the counties and other interested parties have attempted informally to resolve the dispute. The letter should also identify (names, email addresses, and phone numbers) all potentially interested parties, including other county agencies, congregate living facilities where the person has lived, if any, other family members, and the guardian, if any, that the requester can reasonably determine.
3. Within 10 business days after receiving the request, DHS Area Administration will provide written notice of the request to all interested parties and request written background information. The letter will state that DHS will make a determination of the county of responsibility. To assist counties, a copy of the request will be sent to the county corporation counsel's office.
4. Written information and comments that are applicable to the question of residence, including only as much protected health information as necessary, must be submitted to DHS Area Administration within 30 days after the date of the notice.
5. Area Administration, in conjunction with the DHS Office of Legal Counsel, will review the information submitted and "make further such investigations as he or she deems proper." Wis. Stat. § 51.40(g)2. Area Administration may request additional information from any interested party, institution, facility, or county agency.
6. DHS Director of Area Administration will issue a written decision within 30 days after the period for submitting information.
7. The decision will be addressed to the party who requested the decision, and a copy will be sent to all other interested parties.

8. If the request for the residency determination was made without court involvement, the decision may be appealed to the DOA Division of Hearings and Appeals under Wis. Stat. § 227.44. Wis. Stat. § 51.40(2)(g)2. If the request was made in conjunction with an ongoing circuit court proceeding, (*e.g.*, a guardianship hearing), the decision of the Department shall be considered a recommendation to the court. The circuit court shall make any final determination of county of responsibility. Any appeal of the court's decision must be made pursuant to the applicable procedures for requesting review of a circuit court decision.
9. While the decision is pending, the county department that has been providing services to the individual shall continue to provide necessary services to the individual.
10. If no county is currently providing services, the county in which the individual is physically present shall provide necessary services pending the determination.
11. A determination by DHS may provide for a period of transitional services to assure continuity of services. The transition period shall clearly state the beginning and ending dates and responsible counties by specifying a date until which the county department that has been providing services shall continue to do so.
12. The formal residency determination of DHS is binding on the county determined to have responsibility for the individual. Unless noted in the determination letter, the county determined to be the county of responsibility shall assume responsibility immediately following receipt of the determination and during any pending appeal brought under ch. 227. If a county does not comply with the finding, DHS, a county, the individual's guardian, or a facility providing services may go to court for an order to enforce the legal determination.
13. DHS shall have the final authority to decide responsibility for funding and provision of services.

C. Private Placements

There are occasions when private attorneys request residency determinations without first consulting with the county. These requests may be in response to placements in facilities without county participation. To minimize these types of placements, the county agency and the corporation counsel should establish a system of notification with the Probate Court so they are informed up front of such requests. Likewise, county agencies need to make residential care facilities aware of the requirement to complete necessary paperwork and receive county approval prior to accepting the person for placement.

D. Change of Venue

When a county is considering a change of venue, the county to which the venue is to be changed must be notified. This notification should allow sufficient time for the county to which venue may be changed to become involved with the facts of the case and to present their own case in court if the change is not agreed to.

E. Emergency Detentions and Fiscal Responsibility

Persons who are in need of emergency services shall be provided such services by the county in which the person is physically present. Circumstances may result in detentions that frequently lead to Wis. Stat. ch. 51 emergency detentions. In these proceedings determining the county of residence is important. The county circuit court where the individual was detained usually

conducts the proceedings. A court action in a county does not, in and of itself, mean that the county where the court is located is the county of fiscal responsibility.

F. State Institution Referrals and Releases

Prior to release of an individual institutionalized in a state facility, both the county where the placement is to occur and the county of fiscal responsibility must be advised and participate in planning. The county agency under Wis. Stat. §§ 51.42 or 51.437 to which the individual is committed must approve the discharge. The fiscally responsible county or county of residence, as indicated by institutional records, shall be responsible for the cost of service. Each state facility shall notify the appropriate Chapter 51 Board whenever there is a transfer that may affect that board.