***–4828/P1.91* SECTION 91.** 51.62 (1) (ag) of the statutes is repealed and recreated to read:

51.62 **(1)** (ag) "Abuse" has the meaning given in s. 46.90 (1) (a).

***–4828/P1.92* SECTION 92.** 51.62 (1) (ar) of the statutes is created to read:

51.62 **(1)** (ar) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

***–4828/P1.93* SECTION 93.** 51.62 (1) (br) of the statutes is repealed and recreated to read:

51.62 **(1)** (br) "Neglect" has the meaning given in s. 46.90 (1) (f).

***–4828/P1.94* SECTION 94.** 51.62 (3) (a) 2m. of the statutes is amended to read:

51.62 **(3)** (a) 2m. Have immediate access to any ~~person~~ individual with mental illness or developmental disability, regardless of age, who has requested services or on whose behalf services have been requested from the protection and advocacy agency or concerning whom the protection and advocacy agency has reasonable cause to believe that abuse, neglect, financial exploitation, or a violation of rights of the individual has occurred.

***–4829/P1.63* SECTION 63.** 51.67 (intro.) of the statutes is amended to read:

51.67 Alternate procedure; protective services. (intro.) If, after a hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Temporary protective placement for an individual in a center for the developmentally disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch.

1 55. If the individual is in a treatment facility, the individual may remain in the
2 facility during the period of temporary protective placement if no other appropriate
3 facility is available. The court may order psychotropic medication as a temporary
4 protective service under this section if it finds that there is probable cause to believe
5 the individual is not competent to refuse psychotropic medication and that the
6 medication ordered will have therapeutic value and will not unreasonably impair the
7 ability of the individual to prepare for and participate in subsequent legal
8 proceedings. An individual is not competent to refuse psychotropic medication if,
9 because of ~~chronic~~ serious and persistent mental illness, and after the advantages
10 and disadvantages of and alternatives to accepting the particular psychotropic
11 medication have been explained to the individual, one of the following is true:

12 ***–4829/P1.64*** **SECTION 64.** 51.67 (2) of the statutes is amended to read:

13 51.67 **(2)** The individual is substantially incapable of applying an
14 understanding of the advantages, disadvantages and alternatives to his or her
15 ~~chronic~~ serious and persistent mental illness in order to make an informed choice as
16 to whether to accept or refuse psychotropic medication.

NOTE: SECTIONS 63 and 64 revise the term "chronic mental illness" to "serious and persistent mental illness".

17 ***–4830/P1.100*** **SECTION 100.** Chapter 54 of the statutes is created to read:

18 **CHAPTER 54**

19 **GUARDIANSHIPS AND CONSERVATORSHIPS**

20 SUBCHAPTER I

21 DEFINITIONS

22 **54.01 Definitions.** In subchs I to VI:

1 **(1)** "Activities of daily living" means activities relating to the performance of
2 self care, work, and leisure activities, including dressing, eating, grooming, mobility,
3 and object manipulation.

4 **(3)** "Conservator" means a person who is appointed by a court at an individual's
5 request under s. 54.76 (2) to manage the estate of the individual.

6 **(4)** "Court" means the circuit court or judge assigned to exercise probate
7 jurisdiction or the assignee of the judge under s. 757.68 (4m) or 851.73 (1) (g) who is
8 assigned relevant authority.

9 **(5)** "Decedent" means the deceased individual whose estate is subject to
10 administration.

11 **(6)** "Degenerative brain disorder" means the loss or dysfunction of an
12 individual's brain cells to the extent that he or she is substantially impaired in his
13 or her ability to provide adequately for his or her own care or custody or to manage
14 adequately his or her property or financial affairs.

15 **(7)** "Depository account" has the meaning given in s. 815.18 (2) (e).

16 **(9)** "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

17 **(9g)** "Foreign court" means a court of a foreign state having competent
18 jurisdiction of a foreign ward.

19 **(9i)** "Foreign guardian" means a guardian appointed by a foreign court for a
20 foreign ward.

21 **(9k)** "Foreign guardianship" means a guardianship issued by a foreign court.

22 **(9m)** "Foreign state" means a state other than this state.

23 **(9p)** "Foreign ward" means an individual who has been found by a foreign court
24 to be incompetent or a spendthrift and who is subject to a guardianship order or
25 related order in a foreign state.

1 **(11)** "Guardian of the estate" means a guardian appointed to comply with the
2 duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.
3 **(12)** "Guardian of the person" means a guardian appointed to comply with the
4 duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25
5 (2).
6 **(13)** "Heir" means any person, including the surviving spouse, who is entitled
7 under the statutes of intestate succession to an interest in property of a decedent.
8 The state is an heir of the decedent and a person interested under s. 45.37 (10) and
9 (11) when the decedent was a member of the Wisconsin Veterans Home at King or
10 at the facilities operated by the department of veterans affairs under s. 45.385 at the
11 time of the decedent's death.
12 **(14)** "Impairment" means a developmental disability, serious and persistent
13 mental illness, degenerative brain disorder, or other like incapacities.
14 **(15)** "Incapacity" means the inability of an individual effectively to receive and
15 evaluate information or to make or communicate a decision with respect to the
16 exercise of a right or power.
17 **(16)** "Individual found incompetent" means an individual who has been
18 adjudicated by a court as meeting the requirements of s. 54.10 (3).
19 **(17)** "Interested person" means any of the following:
20 (a) For purposes of a petition for guardianship, any of the following:
21 1. The proposed ward, if he or she has attained 14 years of age.
22 2. The spouse or adult child of the proposed ward, or the parent of a proposed
23 ward who is a minor.

1 3. For a proposed ward who has no spouse, child, or parent, an heir, as defined
2 in s. 851.09, of the proposed ward that may be reasonably ascertained with due
3 diligence.

4 4. Any individual who is nominated as guardian, any individual who is
5 appointed to act as guardian or fiduciary for the proposed ward by a court of any
6 state, any trustee for a trust established by or for the proposed ward, any person
7 appointed as agent under a power of attorney for health care, as defined in s. 155.01
8 (4), or any person appointed as agent under a durable power of attorney under ch.
9 243.

10 5. If the proposed ward is a minor, the individual who has exercised principal
11 responsibility for the care and custody of the proposed ward during the period of 60
12 consecutive days immediately before the filing of the petition.

13 6. If the proposed ward is a minor and has no living parent, any individual
14 nominated to act as fiduciary for the minor in a will or other written instrument that
15 was executed by a parent of the minor.

16 7. If the proposed ward is receiving moneys paid, or if moneys are payable, by
17 the federal department of veterans affairs, a representative of the federal
18 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or
19 if moneys are payable, by the state department of veterans affairs, a representative
20 of the state department of veterans affairs.

21 8. If the proposed ward is receiving long–term support services or similar public
22 benefits, the county department of human services or social services that is providing
23 the services or benefits.

1 9. The corporation counsel of the county in which the petition is filed and, if the
2 petition is filed in a county other than the county of the proposed ward's residence,
3 the corporation counsel of the county of the proposed ward's residence.
4 10. Any other person required by the court.
5 (b) For purposes of proceedings subsequent to an order for guardianship, any
6 of the following:
7 1. The guardian.
8 2. The spouse or adult child of the ward or the parent of a minor ward.
9 3. The county of venue, through the county's corporation counsel, if the county
10 has an interest.
11 4. Any person appointed as agent under a durable power of attorney under ch.
12 243, unless the agency is revoked or terminated by a court.
13 5. Any other individual that the court may require, including any fiduciary that
14 the court may designate.
15 **(18)** "Least restrictive" means that which places the least possible restriction
16 on personal liberty and the exercise of rights and that promotes the greatest possible
17 integration of an individual into his or her community that is consistent with
18 meeting his or her essential requirements for health, safety, habilitation, treatment,
19 and recovery and protecting him or her from abuse, exploitation, and neglect.
20 **(19)** "Meet the essential requirements for physical health or safety" means
21 perform those actions necessary to provide the health care, food, shelter, clothes,
22 personal hygiene, and other care without which serious physical injury or illness will
23 likely occur.
24 **(21)** "Mortgage" means any agreement or arrangement in which property is
25 used as security.

1 **(23)** "Personal representative" means any individual to whom letters to
2 administer a decedent's estate have been granted by the court or by the probate
3 registrar under ch. 865, but does not include a special administrator.

4 **(24)** "Physician" has the meaning given in s. 448.01 (5).

5 **(25)** "Property" means any interest, legal or equitable, in real or personal
6 property, without distinction as to kind, including money, rights of a beneficiary
7 under a contractual arrangement, chose in action, and anything else that may be the
8 subject of ownership.

9 **(26)** "Proposed ward" means a minor, an individual alleged to be incompetent,
10 or an alleged spendthrift, for whom a petition for guardianship is filed.

11 **(27)** "Psychologist" means a licensed psychologist, as defined in s. 455.01 (4).

12 **(28)** "Psychotropic medication" means a prescription drug, as defined in s.
13 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
14 behavior.

15 **(29)** "Sale" includes an option or agreement to transfer whether the
16 consideration is cash or credit. It includes exchange, partition, and settlement of title
17 disputes. The intent of this subsection is to extend and not to limit the meaning of
18 "sale."

19 **(30)** "Serious and persistent mental illness" means a mental illness that is
20 severe in degree and persistent in duration, that causes a substantially diminished
21 level of functioning in the primary aspects of daily living and an inability to cope with
22 the ordinary demands of life, that may lead to an inability to maintain stable
23 adjustment and independent functioning without long–term treatment and support
24 and that may be of lifelong duration. "Serious and persistent mental illness" includes
25 schizophrenia as well as a wide spectrum of psychotic and other severely disabling

psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

(32) "Standby conservator" means an individual designated by the court under s. 54.76 (2) whose appointment as conservator becomes effective immediately upon the death, resignation, or court's removal of the initially appointed conservator, or if the initially appointed conservator is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(33) "Standby guardian" means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death, resignation, or court's removal of the initially appointed guardian, or if the initially appointed guardian is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(34) "Successor conservator" means an individual appointed under s. 54.76 (9).

(35) "Successor guardian" means an individual appointed under s. 54.54.

(36) "Surviving spouse" means an individual who was married to the decedent at the time of the decedent's death. "Surviving spouse" does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if the decree or judgment is not recognized as valid in this state, unless the 2 subsequently participated in a marriage ceremony purporting to marry each other or they subsequently held themselves out as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual.

(c) An individual who was party to a valid proceeding concluded by an order purporting to terminate all property rights based on the marriage with the decedent.

(38) "Will" includes a codicil and any document incorporated by reference in a testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy, unless the copy has been proven as a will under s. 856.17, but "will" does include a properly executed duplicate original.

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian. (1) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual if the court determines that the individual is a minor.

(2) (a) A court may appoint a guardian of the estate for an individual if the court finds by clear and convincing evidence that the individual is aged at least 18 years and is a spendthrift.

(b) In appointing a guardian of the estate under this subsection or determining what powers are appropriate for the guardian of the estate to exercise under s. 54.18 or 54.20, the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4).

2. The medical or psychological report provided under s. 54.36 (1) and any additional medical, psychological, or other evaluation ordered by the court under s. 54.40 (4) (e) or offered by a party and received by the court.

3. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian of the estate is the least restrictive means to provide for the individual's need for a substitute decision maker.

1 4. The preferences, desires, and values of the individual with regard to personal
2 needs or property management.
3 5. The nature and extent of the individual's care and treatment needs and
4 property and financial affairs.
5 6. Whether the individual's situation places him or her at risk of abuse,
6 exploitation, neglect, or violation of rights.
7 7. The extent of the demands placed on the individual by his or her personal
8 needs and by the nature and extent of his or her property and financial affairs.
9 8. Any mental disability, alcoholism, or other drug dependence of the individual
10 and the prognosis of the mental disability, alcoholism, or other drug dependence.
11 9. Whether the effect on the individual's evaluative capacity is likely to be
12 temporary or long term, and whether the effect may be ameliorated by appropriate
13 treatment.
14 10. Other relevant evidence.
15 (c) Before appointing a guardian of the estate under this subsection or
16 determining what powers are appropriate for the guardian of the estate to exercise
17 under s. 54.18 or 54.20, the court shall determine if additional medical,
18 psychological, social, vocational, or educational evaluation is necessary for the court
19 to make an informed decision respecting the individual.
20 (d) In appointing a guardian of the estate under this subsection, the court shall
21 authorize the guardian of the estate to exercise only those powers under ss. 54.18 and
22 54.20 that are necessary to provide for the individual's personal needs and property
23 management and to exercise the powers in a manner that is appropriate to the
24 individual and that constitutes the least restrictive form of intervention.

1 **(3)** (a) A court may appoint a guardian of the person or a guardian of the estate,
2 or both, for an individual based on a finding that the individual is incompetent only
3 if the court finds by clear and convincing evidence that all of the following are true:
4 1. The individual is aged at least 17 years and 9 months.
5 2. For purposes of appointment of a guardian of the person, because of an
6 impairment, the individual is unable effectively to receive and evaluate information
7 or to make or communicate decisions to such an extent that the individual is unable
8 to meet the essential requirements for his or her physical health and safety.
9 3. For purposes of appointment of a guardian of the estate, because of an
10 impairment, the individual is unable effectively to receive and evaluate information
11 or to make or communicate decisions related to management of his or her property
12 or financial affairs, to the extent that any of the following applies:
13 a. The individual has property that will be dissipated in whole or in part.
14 b. The individual is unable to provide for his or her support.
15 c. The individual is unable to prevent financial exploitation.
16 4. The individual's need for assistance in decision making or communication
17 is unable to be met effectively and less restrictively through appropriate and
18 reasonably available training, education, support services, health care, assistive
19 devices, or other means that the individual will accept.
20 (b) Unless the proposed ward is unable to communicate decisions effectively in
21 any way, the determination under par. (a) may not be based on mere old age,
22 eccentricity, poor judgment, or physical disability.
23 (c) In appointing a guardian under this subsection, declaring incompetence to
24 exercise a right under s. 54.25 (2) (c), or determining what powers are appropriate

1 for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the court shall
2 consider all of the following:

3 1. The report of the guardian ad litem, as required in s. 54.40 (4).

4 2. The medical or psychological report provided under s. 54.36 (1) and any
5 additional medical, psychological, or other evaluation ordered by the court under s.
6 54.40 (4) (e) or offered by a party and received by the court.

7 3. Whether the proposed ward has engaged in any advance planning for
8 financial and health care decision making that would avoid guardianship, including
9 by executing a durable power of attorney under ch. 243, a power of attorney for health
10 care, as defined in s. 155.01 (10), a trust, or a jointly held account.

11 4. Whether other reliable resources are available to provide for the individual's
12 personal needs or property management, and whether appointment of a guardian is
13 the least restrictive means to provide for the individual's need for a substitute
14 decision maker.

15 5. The preferences, desires, and values of the individual with regard to personal
16 needs or property management.

17 6. The nature and extent of the individual's care and treatment needs and
18 property and financial affairs.

19 7. Whether the individual's situation places him or her at risk of abuse,
20 exploitation, neglect, or violation of rights.

21 8. Whether the individual can adequately understand and appreciate the
22 nature and consequences of his or her impairment.

23 9. The individual's management of the activities of daily living.

1 10. The individual's understanding and appreciation of the nature and
2 consequences of any inability he or she may have with regard to personal needs or
3 property management.
4 11. The extent of the demands placed on the individual by his or her personal
5 needs and by the nature and extent of his or her property and financial affairs.
6 12. Any physical illness of the individual and the prognosis of the individual.
7 13. Any mental disability, alcoholism, or other drug dependence of the
8 individual and the prognosis of the mental disability, alcoholism, or other drug
9 dependence.
10 14. Any medication with which the individual is being treated and the
11 medication's effect on the individual's behavior, cognition, and judgment.
12 15. Whether the effect on the individual's evaluative capacity is likely to be
13 temporary or long term, and whether the effect may be ameliorated by appropriate
14 treatment.
15 16. Other relevant evidence.
16 (d) Before appointing a guardian under this subsection, declaring
17 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers
18 are appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the
19 court shall determine if additional medical, psychological, social, vocational, or
20 educational evaluation is necessary for the court to make an informed decision
21 respecting the individual's competency to exercise legal rights and may obtain
22 assistance in the manner provided in s. 55.06 (8) whether or not protective placement
23 is made.
24 (e) In appointing a guardian under this subsection, the court shall authorize
25 the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) (d)

that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(4) If the court appoints both a guardian of the person and a guardian of the estate for an individual other than an individual found to be a spendthrift, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person to act as both.

(5) The court may appoint coguardians of the person or coguardians of the estate, subject to any conditions that the court imposes.

54.12 **(1)** (e) Make payment to the agent under a durable power of attorney of the ward.

(f) Make payment to the trustee of any trust created for the benefit of the ward.

SUBCHAPTER III

NOMINATION OF GUARDIAN;

POWERS AND DUTIES; LIMITATIONS

54.15 **(1m)** POTENTIAL CONFLICTS OF INTEREST.

(2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian of the estate an agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of an agent is not in the best interests of the proposed ward.

(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD.

1 **(8)** STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the
2 hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and
3 notarized statement as to whether any of the following is true:
4 1. The proposed guardian is currently charged with or has been convicted of a
5 crime, as defined in s. 939.12.
6 2. The proposed guardian has filed for or received protection under the federal
7 bankruptcy laws.
8 3. Any license, certificate, permit, or registration of the proposed guardian that
9 is required under chs. 440 to 480 or by the laws of another state for the practice of
10 a profession or occupation has been suspended or revoked.
11 4. The proposed guardian is listed under s. 146.40 (4g) (a) 2.
12 (b) If par. (a) 1., 2., 3., or 4. applies to the proposed guardian, he or she shall
13 include in the sworn and notarized statement a description of the circumstances
14 surrounding the applicable event under par. (a) 1., 2., 3., or 4.
15 **54.18 General duties and powers of guardian; limitations; immunity.**
16 **(1)** A ward retains all his or her rights that are not assigned to the guardian or
17 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only
18 those powers that the guardian is authorized to exercise by statute or court order.
19 A guardian may be granted only those powers necessary to provide for the personal
20 needs or property management of the ward in a manner that is appropriate to the
21 ward and that constitutes the least restrictive form of intervention.
22 **(2)** A guardian shall do all of the following:
23 (a) Exercise the degree of care, diligence, and good faith when acting on behalf
24 of a ward that an ordinarily prudent person exercises in his or her own affairs.

1 (b) Advocate for the ward's best interests, including, if the ward is protectively
2 placed under ch. 55 and if applicable, advocating for the ward's applicable rights
3 under ss. 50.09 and 51.61.
4 (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation
5 to the ward.
6 (d) Notify the court of any change of address of the guardian or ward.
7 **(3)** No guardian may do any of the following:
8 (b) Lend funds of the ward to another individual or to an entity, unless the court
9 first approves the terms, rate of interest, and any requirement for security.
10 **54.19 Duties of guardian of the estate.** Subject to s. 54.18 (1) and except
11 as specifically limited in the order of appointment, the guardian of the estate shall,
12 following any applicable procedures of s. 54.22, do all of the following in order to
13 provide a ward with the greatest amount of independence and self–determination
14 with respect to property management in light of the ward's functional level,
15 understanding, and appreciation of his or her functional limitations and the ward's
16 personal wishes and preferences with regard to managing the activities of daily
17 living:
18 **(2)** Retain, expend, distribute, sell, or invest the ward's property, rents, income,
19 benefits, and proceeds and account for all of them, subject to chs. 786 and 881.
20 **(3)** Determine, if the ward has executed a will, the will's location, determine
21 the appropriate persons to be notified in the event of the ward's death, and, if the
22 death occurs, notify those persons.
23 **(4)** Use the ward's income and property to maintain and support the ward and
24 any dependents of the ward.
25 **(5)** Prepare and file an annual account as specified in s. 54.62.

1 **(6)** At the termination of the guardianship, deliver the ward's assets to the
2 persons entitled to them.
3 **(8)** File, with the register of deeds of any county in which the ward possesses
4 real property of which the guardian has actual knowledge, a sworn and notarized
5 statement that specifies the legal description of the property, the date that the ward
6 is determined to be an incompetent, and the name, address, and telephone number
7 of the ward's guardian and any surety on the guardian's bond.
8 **(9)** For a ward who receives governmental benefits for which a representative
9 payee is appropriate, if no representative payee is appointed, apply to be appointed
10 the ward's representative payee, or ensure that a representative payee is appointed.
11 **(10)** Perform any other duty required by the court order.
12 **54.20 Powers of guardian of the estate. (1)** (a) The ward's understanding
13 of the harm that he or she is likely to suffer as the result of his or her inability to
14 manage property and financial affairs.
15 (b) The ward's personal preferences and desires with regard to managing his
16 or her activities of daily living.
17 (c) The least restrictive form of intervention for the ward.
18 **(2)** POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any
19 of the following with respect to the ward's income and assets only with the court's
20 prior written approval following any petition and upon any notice and hearing that
21 the court requires:
22 (a) Make gifts, under the terms, including the frequency, amount, and donees
23 specified by the court in approval of a petition under s. 54.21.
24 (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets
25 into the trust.

1 (d) Purchase an annuity or insurance contract and exercise rights to elect
2 options or change beneficiaries under insurance and annuity policies and to
3 surrender the policies for their cash value.
4 (e) Ascertain, establish, and exercise any rights available to the ward under a
5 retirement plan or account.
6 (f) Exercise any elective rights that accrue to the ward as the result of the death
7 of the ward's spouse or parent.
8 (g) Release or disclaim, under s. 854.13, any interest of the ward that is received
9 by will, intestate succession, nontestamentary transfer at death, or other transfer.
10 (i) Provide support for an individual whom the ward is not legally obligated to
11 support.
12 (j) Convey or release a contingent or expectation interest in property, including
13 a marital property right and any right of survivorship that is incidental to a joint
14 tenancy or survivorship marital property.
15 **(3)** POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate
16 may do any of the following on behalf of the ward without first receiving the court's
17 approval:
18 (a) Provide support from the ward's income and assets for an individual whom
19 the ward is legally obligated to support.
20 (b) Enter into a contract, other than a contract under sub. (2) or that is
21 otherwise prohibited under this chapter.
22 (c) Exercise options of the ward to purchase securities or other property.
23 (d) Authorize access to or release of the ward's confidential financial records.
24 (e) Apply for public and private benefits.

(k) Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

54.21 Petition to transfer ward's assets to another. (1) In this section:

(a) "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

(b) "Other individual" means any of the following:

1. The ward's spouse, if any.

2. The ward's close friend, if any, and if the close friend meets the requirements of s. 50.94 (3) (e) 1. and 2.

3. The guardian ad litem of the ward's minor child, if any.

4. The ward's disabled child, if any.

5. Any of the ward's siblings who has an ownership interest in property that is co–owned with the ward.

6. Any of the ward's children who provides care for the ward as specified in 42 USC 1396p (c) (2) (A) iv.

(c) "Will, trust, or other instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other individual who seeks an order authorizing and directing the guardian of the estate to transfer any of a ward's income or assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

(a) Whether a proceeding by anyone seeking this authority with respect to the ward's income and assets was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance,

1 support, and well–being and to provide for others dependent upon the ward for
2 support, regardless of whether the ward is legally obligated to provide the support.
3 If the petitioner has access to a copy of a court order or written agreement that
4 specifies support obligations of the ward, the petitioner shall attach the copy to the
5 petition.

6 (c) The income and assets of the ward that is the subject of the petition, the
7 proposed disposition of the property, and the reasons for the disposition.

8 (d) The wishes, if ascertainable, of the ward.

9 (e) As specified in sub. (3), whether the ward has previously executed a will or
10 similar instrument.

11 (f) A description of any significant gifts or patterns of gifts that the ward has
12 made.

13 (g) The current and likely future effect of the proposed transfer of assets on the
14 ward's eligibility for public benefits, including medical assistance or a benefit under
15 s. 46.27.

16 (h) Whether the guardian of the person and the guardian of the estate, if not
17 the petitioner, agree with or object to the transfer.

18 (i) The names, post–office addresses, and relationships to the ward of all of the
19 following:

20 1. Any presumptive adult heirs of the ward who can be ascertained with
21 reasonable diligence.

22 2. If the ward has previously executed a will, trust, or other instrument, the
23 named or described beneficiaries, if known, under the most recent will, trust, or other
24 instrument executed by the ward.

1 **(3)** (a) If a ward has previously executed a will, trust, or other instrument for
2 nontestamentary transfer and the petitioner is able, with reasonable diligence, to
3 obtain a copy, the petitioner shall provide the copy to the court, together with a
4 statement that specifies all of the following:

5 1. The manner in which the copy was secured.

6 2. The manner in which the terms of the will, trust, or other instrument for
7 nontestamentary transfer became known to the petitioner for nontestamentary
8 transfer.

9 3. The basis for the petitioner's belief that the copy is of the ward's most recently
10 executed will, trust, or other instrument.

11 (b) If the petitioner is unable to obtain a copy of the most recently executed will
12 or other dispositive estate planning document or is unable to determine if the ward
13 has previously executed a will or other dispositive estate planning document, the
14 petitioner shall provide a statement to the court that specifies the efforts that were
15 made by the petitioner to obtain a copy or ascertain the information.

16 (c) If a copy of the most recently executed will or other dispositive estate
17 planning document is not otherwise available, the court may order the person who
18 has the original will or other dispositive estate planning document to provide a
19 photocopy to the court for in camera examination. The court may provide the
20 photocopy to the parties to the proceeding unless the court finds that doing so is
21 contrary to the ward's best interests.

22 (d) The petitioner and the court shall keep confidential the information in a will
23 or other dispositive estate planning document, or a copy of the will or other
24 dispositive estate planning document, under this subsection, and may not, unless
25 otherwise authorized, disclose that information.

1 **(4)** The petitioner shall serve notice upon all of the following, together with a
2 copy of the petition, stating that the petitioner will move the court, at a time and
3 place named in the notice, for the order described in the petition:
4 (a) If not the same as the petitioner, the guardian of the person and the
5 guardian of the estate.
6 (b) Unless the court dispenses with notice under this subsection, the persons
7 specified in sub. (2) (i), if known to the petitioner.
8 (c) The county corporation counsel, if the county has an interest in the matter.
9 **(5)** The court shall consider all of the following in reviewing the petition:
10 (a) The wishes of the ward, if known.
11 (b) Whether the duration of the ward's impairment is likely to be sufficiently
12 brief so as to justify dismissal of the proceedings in anticipation of the ward's
13 recovered ability to decide whether, and to whom, to transfer his or her assets.
14 (c) Whether the proposed transfer will benefit the ward, the ward's income and
15 assets, or members of the ward's immediate family.
16 (d) Whether the donees or beneficiaries under the proposed disposition are
17 reasonably expected objects of the ward's generosity and whether the proposed
18 disposition is consistent with any ascertained wishes of the ward or known estate
19 plan or pattern of lifetime gifts that he or she has made.
20 (e) Whether the proposed disposition will produce tax savings that will
21 significantly benefit the ward, his or her dependents, or other persons for whom the
22 ward would be concerned.
23 (f) The factors specified in sub. (2) (a) to (i) and any statements or other evidence
24 under sub. (3).
25 (g) Any other factors that the court determines are relevant.

1 **(6)** The court may grant the petition under sub. (2) and enter an order
2 authorizing and directing the guardian of the estate to take action requested in the
3 petition, if the court finds and records all of the following:
4 (a) That the ward has incapacity to perform the act for which approval is sought
5 and the incapacity is not likely to change positively within a reasonable period of
6 time.
7 (b) That a competent individual in the position of the ward would likely perform
8 the act under the same circumstances.
9 (c) That, before the ward had incapacity to perform the act for which approval
10 is sought, he or she did not manifest intent that is inconsistent with the act.
11 **(7)** Nothing in this section requires a guardian to file a petition under this
12 section and a guardian is not liable or accountable to any person for having failed to
13 file a petition under this section.
14 54.25 **(1)** DUTIES. A guardian of the person shall do all of the following:
15 (b) 1. Regular inspection, in person, of the ward's condition, surroundings, and
16 treatment.
17 2. Examination of the ward's patient health care records and treatment records
18 and authorization for redisclosure as appropriate.
19 3. Attendance and participation in staff meetings of any facility in which the
20 ward resides or is a patient, if the meeting includes a discussion of the ward's
21 treatment and care.
22 4. Inquiry into the risks and benefits of, and alternatives to, treatment for the
23 ward, particularly if drastic or restrictive treatment is proposed.
24 5. Specific consultation with providers of health care and social services in
25 making all necessary treatment decisions.

1 **(2)** POWERS. (a) *Rights and powers of a guardian of the person.* A guardian of
2 the person has only those rights and powers that the guardian is specifically
3 authorized to exercise by statute, rule, or court order. Any other right or power is
4 retained by the ward, unless the ward has been declared incompetent to exercise the
5 right under par. (c) or the power has been transferred to the guardian under par. (d).
6 (b) *Rights retained by individuals determined incompetent.* An individual
7 determined incompetent retains the power to exercise all of the following rights,
8 without consent of the guardian:
9 1. To have access to and communicate privately with the court and with
10 governmental representatives, including the right to have input into plans for
11 support services, the right to initiate grievances, including under state and federal
12 law regarding resident or patient rights, and the right to participate in
13 administrative hearings and court proceedings.
14 2. To have access to, communicate privately with, and retain legal counsel.
15 Fees are to be paid from the income and assets of the ward, subject to court approval.
WPO+ EDITOR: PLEASE SEE NEXT PAGE
16 ***–4828/P1.95*** **SECTION 95.** 55.001 of the statutes is amended to read:
17 **55.001 Declaration of policy.** The legislature recognizes that many citizens
18 of the state, because of ~~the infirmities of aging,~~ chronic mental illness, ~~mental~~
19 ~~retardation, other~~ degenerative brain disorders, developmental disabilities, or like
20 incapacities incurred at any age, are in need of protective services. Except as
21 provided in s. 49.45 (30m) (a), these services should, to the maximum degree of
22 feasibility under programs, services and resources that the county board of
23 supervisors is reasonably able to provide within the limits of available state and
24 federal funds and of county funds required to be appropriated to match state funds,
25 allow the individual the same rights as other citizens, and at the same time protect

WPO & EDITOR: PLEASE NOTE: AFTER LINE 15, THIS DOCUMENT IS 05-4831/P2

1 3. Attendance and participation in staff meetings of any facility in which the
2 ward resides or is a patient, if the meeting includes a discussion of the ward's
3 treatment and care.

4 4. Inquiry into the risks and benefits of, and alternatives to, treatment for the
5 ward, particularly if drastic or restrictive treatment is proposed.

6 5. Specific consultation with providers of health care and social services in
7 making all necessary treatment decisions.

8 **(2)** POWERS. (a) *Rights and powers of a guardian of the person.* A guardian of
9 the person has only those rights and powers that the guardian is specifically
10 authorized to exercise by statute, rule, or court order. Any other right or power is
11 retained by the ward, unless the ward has been declared incompetent to exercise the
12 right under par. (c) or the power has been transferred to the guardian under par. (d).

13 (b) *Rights retained by individuals determined incompetent.* An individual
14 determined incompetent retains the power to exercise all of the following rights,
15 without consent of the guardian:

16 1. To have access to and communicate privately with the court and with
17 governmental representatives, including the right to have input into plans for
18 support services, the right to initiate grievances, including under state and federal
19 law regarding resident or patient rights, and the right to participate in
20 administrative hearings and court proceedings.

21 2. To have access to, communicate privately with, and retain legal counsel.
22 Fees are to be paid from the income and assets of the ward, subject to court approval.

23 3. To have access to and communicate privately with representatives of the
24 protection and advocacy agency under s. 51.62 and the board on aging and long–term
25 care.

1 4. To protest a residential placement made under s. 55.05 (5), and to be
2 discharged from a residential placement unless the individual is protectively placed
3 under s. 55.06 or the elements of s. 55.06 (11) are present.
4 5. To petition for court review of guardianship, protective services, protective
5 placement, or commitment orders.
6 6. To give or withhold a consent reserved to the individual under ch. 51.
7 7. To exercise any other rights specifically reserved to the individual by statute
8 or the constitutions of the state or the United States, including the rights to free
9 speech, freedom of association, and the free exercise of religious expression.
10 (c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as
11 part of a proceeding under s. 54.44 in which an individual is found incompetent and
12 a guardian is appointed, declare that the individual has incapacity to exercise one
13 or more of the following rights:
14 a. The right to consent to marriage.
15 b. The right to execute a will.
16 c. The right to serve on a jury.
17 d. The right to apply for an operator's license, a license issued under ch. 29, or
18 a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is
19 incapable of understanding the nature and risks of the licensed or credentialed
20 activity, to the extent that engaging in the activity would pose a substantial risk of
21 physical harm to the individual or others. A failure to find that an individual is
22 incapable of applying for a license or credential is not a finding that the individual
23 qualifies for the license or credential under applicable laws and rules.
24 e. The right to consent to sterilization, if the court finds that the individual is
25 incapable of understanding the nature, risk, and benefits of sterilization, after the

1 nature, risk, and benefits have been presented in a form that the individual is most
2 likely to understand.

3 f. The right to consent to organ, tissue, or bone marrow donation.

4 2. Any finding under subd. 1. that an individual lacks evaluative capacity to
5 exercise a right must be based on clear and convincing evidence. In the absence of
6 such a finding, the right is retained by the individual.

7 3. If an individual is declared not competent to exercise a right under subd. 1.
8 or 4., a guardian may not exercise the right or provide consent for exercise of the right
9 on behalf of the individual. If the court finds with respect to a right listed under subd.
10 1. a., d., e., or f. that the individual is competent to exercise the right under some but
11 not all circumstances, the court may order that the individual retains the right to
12 exercise the right only with consent of the guardian of the person.

13 4. Regardless of whether a guardian is appointed, a court may declare that an
14 individual is not competent to exercise the right to register to vote or to vote in an
15 election if it finds by clear and convincing evidence that the individual is incapable
16 of understanding the objective of the elective process. If the petition for a declaration
17 of incompetence to vote is not part of a petition for guardianship, the same
18 procedures shall apply as would apply for a petition for guardianship.

19 The determination of the court shall be communicated in writing by the clerk
20 of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93
21 with the responsibility for determining challenges to registration and voting that
22 may be directed against that elector. The determination may be reviewed as
23 provided in s. 54.64 (2) (a) and (c) and any subsequent determination of the court
24 shall be likewise communicated by the clerk of court.

1 (d) *Guardian authority to exercise certain powers.* 1. A court may authorize a
2 guardian of the person to exercise all or part of any of the powers specified in subd.
3 2. only if it finds, by clear and convincing evidence, that the individual lacks
4 evaluative capacity to exercise the power. The court shall authorize the guardian of
5 the person to exercise only those powers that are necessary to provide for the
6 individual's personal needs, safety, and rights and to exercise the powers in a manner
7 that is appropriate to the individual and that constitutes the least restrictive form
8 of intervention. The court may limit the authority of the guardian of the person with
9 respect to any power to allow the individual to retain power to make decisions about
10 which the individual is able effectively to receive and evaluate information and
11 communicate decisions. When a court appoints a guardian for a minor, the guardian
12 shall be granted care, custody, and control of the person of the minor.

13 2. All of the following are powers subject to subd. 1.:

14 a. Except as provided under subd. 2. b., c., and d., and except for consent to
15 psychiatric treatment and medication under ch. 51, and subject to any limitation
16 under s. 54.46 (3) (b), the power to give informed consent, if in the ward's best
17 interests, to voluntary or involuntary medical examination and treatment and to the
18 voluntary receipt by the ward of medication, including any appropriate psychotropic
19 medication that is in the ward's best interest, if the guardian has first made a
20 good–faith attempt to discuss with the ward the ward's voluntary receipt of the
21 psychotropic medication and the ward does not protest. For purposes of this subd.
22 2. a., "protest" means make more than one discernible negative response, other than
23 mere silence, to the offer of, recommendation for, or other proffering of voluntary
24 receipt of psychotropic medication. "Protest" does not mean a discernible negative
25 response to a proposed method of administration of the psychotropic medication. A

1 guardian may consent to the involuntary administration of psychotropic medication
2 only under a court order under s. 55.14. In determining whether medication or
3 medical treatment, other than psychotropic medication, is in the ward's best interest,
4 the guardian shall consider the invasiveness of the medication or treatment and the
5 likely benefits and side effects of the medication or treatment.

6 b. Unless it can be shown by clear and convincing evidence that the ward would
7 never have consented to research participation, the power to authorize the ward's
8 participation in an accredited or certified research project if the research might help
9 the ward; or if the research might not help the ward but might help others, and the
10 research involves no more than minimal risk of harm to the ward.

11 c. The power to authorize the ward's participation in research that might not
12 help the ward but might help others even if the research involves greater than
13 minimal risk of harm to the ward if the guardian can establish by clear and
14 convincing evidence that the ward would have elected to participate in such
15 research; and the proposed research was reviewed and approved by the research and
16 human rights committee of the institution conducting the research. The committee
17 shall have determined that the research complies with the principles of the
18 statement on the use of human subjects for research adopted by the American
19 Association on Mental Deficiency, and with the federal regulations for research
20 involving human subjects for federally supported projects.

21 d. Unless it can be shown by clear and convincing evidence that the ward would
22 never have consented to any experimental treatment, the power to consent to
23 experimental treatment if the court finds that the ward's mental or physical status
24 presents a life–threatening condition; the proposed experimental treatment may be
25 a life saving remedy; all other reasonable traditional alternatives have been

1 exhausted; 2 examining physicians have recommended the treatment; and, in the
2 court's judgment, the proposed experimental treatment is in the ward's best
3 interests.

4 e. The power to give informed consent to receipt by the ward of social and
5 supported living services.

6 f. The power to give informed consent to release of confidential records other
7 than court, treatment, and patient health care records and to redisclosure as
8 appropriate.

9 g. The power to make decisions related to mobility and travel.

10 i. The power to choose providers of medical, social, and supported living
11 services.

12 j. The power to make decisions regarding educational and vocational placement
13 and support services or employment.

14 k. The power to make decisions regarding initiating a petition for the
15 termination of marriage.

16 L. The power to receive all notices on behalf of the ward.

17 m. The power to act in all proceedings as an advocate of the ward, except the
18 power to enter into a contract that binds the ward or the ward's property or to
19 represent the ward in any legal proceedings pertaining to the property, unless the
20 guardian of the person is also the guardian of the estate.

21 n. The power to apply for protective placement under s. 55.06 or for
22 commitment under s. 51.20 or 51.45 (13) for the ward.

23 o. The power to have custody of the ward, if an adult, and the power to have
24 care, custody, and control of the ward, if a minor.

25 p. Any other power the court may specifically identify.

3. In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:

a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision–making skills, and the need of the individual for wider experience.

c. Consider whether the ward's estate is sufficient to pay for the needed services.

SUBCHAPTER IV

PROCEDURES

54.30 Jurisdiction and venue.

(3) (b) 1. An interested person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies

1 and to the register in probate and corporation counsel for the county to which change
2 of venue is sought.

3 3. If no objection to the change of venue is made within 15 days after the date
4 on which notice is given under subd. 2., the circuit court of the county in which venue
5 for the guardianship currently lies may enter an order changing venue. If objection
6 to the change of venue is made within 15 days after the date on which notice is given
7 under subd. 2., the circuit court of the county in which venue for the guardianship
8 currently lies shall set a date for a hearing within 7 days after the objection is made
9 and shall give notice of the hearing to the corporation counsel of that county and to
10 the corporation counsel and register in probate of the county to which change of
11 venue is sought.

12 54.34 **(1)** (k) Whether the proposed ward is a recipient of a public benefit,
13 including medical assistance or a benefit under s. 46.27.

14 (L) The agent under any current, valid power of attorney for health care or
15 durable power of attorney that the proposed ward has executed.

16 (m) Whether the petitioner is requesting a full or limited guardianship and, if
17 limited, the specific authority sought by the petitioner for the guardian or the specific
18 rights of the individual that the petitioner seeks to have removed or transferred.

19 (n) Whether the proposed ward, if married, has children who are not children
20 of the current marriage.

21 (p) Whether the petitioner is aware of any guardianship or conservatorship or
22 related pending or ordered proceeding involving the proposed ward in another state
23 or county and, if so, the details of the guardianship, conservationship, or related
24 processings.

1 **(3)** A petition for the receipt and acceptance by this state of a foreign
2 guardianship of a foreign ward who resides in or intends to move to this state may
3 include other petitions related to the foreign guardianship, such as a petition to
4 modify the terms of the foreign guardianship, and shall include all of the following:
5 (a) A certified copy of the foreign guardianship order that includes all of the
6 following:
7 1. All attachments that describe the duties and powers of the foreign guardian.
8 2. All amendments or modifications to the foreign guardianship order that were
9 entered after issuance of the original foreign guardianship order, including any order
10 to transfer the foreign guardianship.
11 (b) The address of the foreign court that issued the foreign guardianship order.
12 (c) A listing of any other guardianship petitions for the foreign ward that are
13 pending or that have been filed in any jurisdiction at any time within 24 months
14 before the filing of the petition under this subsection and the names and addresses
15 of the courts in which the petitions have been filed.
16 (d) The petitioner's name, residence, current address, and any relationship of
17 the petitioner to the foreign ward other than as foreign guardian.
18 (e) The name, age, principal residence, and current address of the foreign ward.
19 (f) The name and address of any spouse of the foreign ward and any adult
20 children, parents, or adult siblings of the foreign ward. If the foreign ward has no
21 spouse, adult child, parent, or adult sibling, the name and address of at least one
22 adult who is next closest in degree of kinship, as specified in s. 990.001 (16), to the
23 ward, if available.
24 (g) The name and address of any person other than the foreign guardian who
25 is responsible for the care or custody of the foreign ward.

(B) 54.36 (B) (title) Examination of proposed ward.

(h) The name and address of any legal counsel of the foreign ward, including any guardian ad litem appointed by the foreign court.

(i) The reason for the transfer of the foreign guardianship.

(j) A general statement of the foreign ward's property, its location, its estimated value, and the source and amount of any other anticipated income or receipts.

SECTION #. CR; 54.36 (title)

54.36 **(2)** A petitioner or guardian ad litem may petition the court for an order requiring the proposed ward to submit to an examination by a licensed physician or psychologist pursuant to s. 804.10 (1).

(3) A physician or psychologist who examines a proposed ward under a court order requiring the examination may, without the informed consent of the proposed ward, obtain access to the patient health care records and treatment records of the proposed ward.

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing. A copy of the petition, motion, or other required document shall be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last–known address of the recipient or was sent by facsimile transmission to the last–known facsimile transmission number of the recipient. Failure of the petitioner to provide notice to all interested persons shall deprive the court of jurisdiction unless receipt of notice is waived by the interested person or under sub. (2) (b) 4.

(1m) NOTICE OF PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP. (a) Notice of a petition for receipt and acceptance of a foreign guardianship, unless otherwise provided, shall be delivered in person, by certified

1 mail with return receipt requested, or by facsimile transmission. Notice is
2 considered to be given by proof of personal delivery or by proof that the notice was
3 mailed to the last–known address of the recipient or was sent by facsimile
4 transmission to the last–known facsimile transmission number of the recipient.
5 Notice shall be served by the petitioner on all of the following:

6 1. The foreign ward. The notice under this subdivision shall be delivered
7 personally, shall be in plain language and large type, and shall include all of the
8 following:

9 a. A statement that the foreign ward has the right to a hearing on the petition
10 under s. 54.44 and that any request for a hearing must be made within 30 days after
11 the date that the petition is delivered in person.

12 b. A description of the procedures by which the foreign ward may exercise his
13 or her right to a hearing.

14 c. A description of the consequences to the foreign ward of a transfer of the
15 foreign guardianship from the foreign jurisdiction to this state.

16 2. The foreign court from which the foreign guardianship is sought to be
17 transferred. Notice under this subdivision shall include a request that the foreign
18 court provide all of the following:

19 a. Certification that the foreign court has no knowledge that the foreign
20 guardian has engaged in any acts specified in s. 54.68 (2) (a) to (i), failed to perform
21 any duties of a guardian required by the foreign jurisdiction or the foreign court, or
22 performed any acts prohibited to a guardian by the foreign jurisdiction or the foreign
23 court.

24 b. Copies of all documents filed with the foreign court that are relevant to the
25 foreign guardianship, including the initial petition for the foreign guardianship and

other filed documents relevant to the appointment of the guardian; any reports and recommendations of any guardian ad litem or other individual appointed by the foreign court to evaluate the appropriateness of the foreign guardianship; any reports of health care or mental health care practitioners that describe the capacity of the foreign ward to care for himself or herself or to manage his or her affairs; any periodic status reports on the condition of the foreign ward and his or her assets; and any order to transfer the foreign guardianship.

3. All interested persons other than the foreign ward, including any foreign legal counsel appointed or retained for the foreign ward and any foreign guardian ad litem appointed for the foreign ward. Notice under this subdivision shall include a statement that informs persons receiving notice of the right to object to the receipt and acceptance of the foreign guardianship and that any request for a hearing must be made within 30 days after the date that the petition is delivered in person, mailed, or sent by facsimile transmission.

(b) Any of the following shall deprive the court of jurisdiction to hear the petition for receipt and acceptance of the foreign guardianship:

1. Failure by the petitioner to serve notice as specified in par. (a) 1., 2., or 3.

2. Failure by the foreign court to provide the certifications and copies within 30 days after receipt of the notice specified in par. (a) 2. or to give indication of compliance within a reasonable period of time.

(2) (b) Personally or by mail at least 10 days before the time set for hearing, to all of the following:

1. The proposed ward's counsel, if any.

2. The proposed ward's guardian ad litem.

3. Any presumptive adult heirs, as specified in s. 851.09, of the proposed ward.

1 4. Any other interested persons, unless specifically waived by the court.

2 5. The agent under any durable power of attorney or power of attorney for
3 health care of the ward.

4 6. Any person who has legal or physical custody of the proposed ward.

5 7. Any public or private agency, charity, or foundation from which the proposed
6 ward is receiving aid or assistance.

7 8. The proposed guardian for the proposed ward.

8 9. Any other person that the court requires.

9 54.40 **(4)** (c) Interview the proposed guardian, the proposed standby guardian,
10 if any, and any other person seeking appointment as guardian and report to the court
11 concerning the suitability of each individual interviewed to serve as guardian and
12 concerning the report under s. 54.15 (8).

13 (d) 1. Review any power of attorney for health care under ch. 155, any durable
14 power of attorney under ch. 243 executed by the proposed ward, and any other
15 advance planning for financial and health care decision making in which the
16 proposed ward had engaged.

17 2. Interview any agent appointed by the proposed ward under any document
18 specified in subd. 1.

19 3. Report to the court concerning whether or not the proposed ward's advance
20 planning is adequate to preclude the need for guardianship.

21 (g) If the proposed ward or ward requests representation by counsel, inform the
22 court and the petitioner or the petitioner's counsel, if any.

23 (h) Attend all court proceedings related to the guardianship.

24 **54.42 Rights of proposed ward or ward. (1)** RIGHT TO COUNSEL. (a) 1. The
25 proposed ward or ward requests counsel.

1 2. The guardian ad litem or another person states to the court that the proposed
2 ward or ward is opposed to the guardianship petition.
3 3. The court determines that the interests of justice require counsel for the
4 proposed ward or ward.
5 (b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an
6 advocate for the expressed wishes of the proposed ward or ward.
7 **(2)** RIGHT TO JURY TRIAL. The proposed ward or ward has the right to a trial by
8 a jury if demanded by the proposed ward or ward, his or her attorney, or the guardian
9 ad litem, except that the right is waived unless demanded at least 48 hours before
10 the time set for the hearing. The number of jurors for such a trial is determined under
11 s. 756.06 (2) (b). The proposed ward or ward, his or her attorney, or the guardian ad
12 litem each has the right to present and cross–examine witnesses, including any
13 physician or licensed psychologist who reports to the court concerning the proposed
14 ward.
15 **(3)** RIGHT TO INDEPENDENT EXAMINATION.
16 **(5)** RIGHT TO BE PRESENT AT HEARING. The proposed ward or ward has the right
17 to be present at any hearing regarding the guardianship.
18 **(6)** RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward or ward has
19 the right to have any hearing regarding the guardianship conducted in a location and
20 manner that is accessible to the proposed ward or ward.
21 **54.44 Hearing. (1)** TIME OF HEARING; PROVISION OF REPORTS. (a) *Time of hearing*
22 *for petition.* A petition for guardianship, other than a petition under par. (b) or (c)
23 or s. 54.50 (1), shall be heard within 90 days after it is filed. The guardian ad litem
24 and attorney for the proposed ward shall be provided with a copy of the report of the

examining physician or psychologist under s. 54.36 (1) at least 96 hours before the time of the hearing.

(c) *Time of hearing for petition for receipt and acceptance of a foreign guardianship.* 1. If a motion for a hearing on a petition for receipt and acceptance of a foreign guardianship is made by the foreign ward, by a person who has received notice under s. 54.38 (1m) (a) 3., or on the court's own motion, a hearing on the petition shall be heard within 90 days after the petition is filed.

2. If a petition for receipt and acceptance of a foreign guardianship includes a request to modify the provisions of the foreign guardianship, the petition shall be heard within 90 days after it is filed.

3. If a person receiving notice of the petition for receipt and acceptance of the foreign guardianship challenges the validity of the foreign guardianship or the authority of the foreign court to appoint the foreign guardian, the court may stay the proceeding under this subsection to afford the opportunity to the interested person to have the foreign court hear the challenge and determine its merits.

(2) STANDARD OF PROOF. Any determination by the court as to whether the proposed ward a minor, is incompetent, or a spendthrift shall be by clear and convincing evidence.

(3) PRESENCE OF PROPOSED GUARDIAN OR PETITIONER. (a) The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the court excuses the attendance of either or, for good cause shown, permits attendance by telephone.

(b) The petitioner, for a petition for receipt and acceptance of a foreign guardianship, shall be physically present at the hearing specified under sub. (1) (c)

1 unless the court excuses the petitioner's attendance or, for good cause shown, permits
2 attendance by telephone.

3 **(4)** PRESENCE OF PROPOSED WARD. (a) *Adult proposed ward.* The petitioner shall
4 ensure that the proposed ward attends the hearing unless the attendance is waived
5 by the guardian ad litem. In determining whether to waive attendance by the
6 proposed ward, the guardian ad litem shall consider the ability of the proposed ward
7 to understand and meaningfully participate, the effect of the proposed ward's
8 attendance on his or her physical or psychological health in relation to the
9 importance of the proceeding, and the proposed ward's expressed desires. If the
10 proposed ward is unable to attend the hearing because of residency in a nursing
11 home or other facility, physical inaccessibility, or a lack of transportation and if the
12 proposed ward, guardian ad litem, advocate counsel, or other interested person so
13 requests, the court shall hold the hearing in a place where the proposed ward may
14 attend.

15 (b) *Minor proposed ward.* A minor is not required to attend the hearing.

16 (c) *Foreign ward.* The petitioner for a petition for receipt and acceptance of a
17 foreign guardianship shall ensure that the foreign ward attends the hearing unless
18 the attendance is waived by the guardian ad litem. In determining whether to waive
19 attendance by the foreign ward, the guardian ad litem shall consider the ability of
20 the foreign ward to understand and meaningfully participate, the effect of the foreign
21 ward's attendance on his or her physical or psychological health in relation to the
22 importance of the proceeding, and the foreign ward's expressed desires. If the foreign
23 ward is unable to attend the hearing because of residency in a nursing home or other
24 facility, physical inaccessibility, or a lack of transportation and if the foreign ward,

1 guardian ad litem, advocate counsel, or other interested person so requests, the court
2 shall hold the hearing in a place where the foreign ward may attend.

3 **(6)** PROPOSED GUARDIAN UNSUITABLE. If the court finds that the proposed
4 guardian is unsuitable, the court shall request that a petition proposing a suitable
5 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall
6 require the guardian ad litem to investigate the suitability of a new proposed
7 guardian.

8 **54.46 Disposition of petition.** After the hearing under s. 54.44, the court
9 shall dispose of the case in one of the following ways:

10 **(1)** DISMISSAL OF THE PETITION FOR GUARDIANSHIP. (a) If the court finds any of
11 the following, the court shall dismiss the petition:

12 1. Contrary to the allegations of the petition, the proposed ward is not any of
13 the following:

14 a. Incompetent.

15 b. A spendthrift.

16 c. A minor.

17 2. Advance planning by the ward, as specified in s. 54.10 (3) (c) 3., renders
18 guardianship unnecessary.

19 3. The elements of the petition are unproven.

20 (b) The court may also consider an application by the proposed ward for the
21 appointment of a conservator under s. 54.76.

22 **(1m)** DISMISSAL OF THE PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN
23 GUARDIANSHIP. If the court finds any of the following, the court shall dismiss the
24 petition:

1 (a) The foreign guardian is not presently in good standing with the foreign
2 court.
3 (b) The foreign guardian is moving or has moved the foreign ward or the
4 property of the foreign ward from the foreign jurisdiction in order to avoid or
5 circumvent the provisions of the foreign guardianship order.
6 (c) The transfer of the foreign guardianship from the foreign jurisdiction is not
7 in the best interests of the foreign ward.
8 **(1r)** RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP. (a) The court shall
9 grant a petition for receipt and acceptance of a foreign guardianship if the court finds
10 all of the following:
11 1. That the foreign guardian is presently in good standing with the foreign
12 court.
13 2. That the foreign guardian is not moving or has not moved the foreign ward
14 or the property of the foreign ward from the foreign jurisdiction in order to avoid or
15 circumvent the provisions of the foreign guardianship order.
16 3. That the transfer of the foreign guardianship from the foreign jurisdiction
17 is in the best interests of the foreign ward.
18 (b) In granting a petition under par. (a), the court shall give full faith and credit
19 to the provisions of the foreign guardianship order concerning the determination of
20 the foreign ward's incapacity. However, the court may modify the provisions of the
21 foreign guardianship order with respect to all of the following:
22 1. Surety bond requirements.
23 2. The appointment of a guardian ad litem.
24 3. Periodic reporting requirements.

1 4. Any other provisions necessary to conform the foreign guardianship order
2 to the requirements of this chapter and other requirements of this state.
3 (c) The court may require the foreign guardian to file an inventory of the foreign
4 ward's property at the time of the transfer from the foreign jurisdiction.
5 (d) If granting the petition for receipt and acceptance of the foreign
6 guardianship, the court shall coordinate with the foreign court the orderly transfer
7 of the foreign guardianship and, in doing so, the court may do all of the following:
8 1. Delay the effective date of the receipt and acceptance of the foreign
9 guardianship.
10 2. Make the receipt and acceptance of the foreign guardianship contingent
11 upon the release or termination of the foreign guardianship and discharge of the
12 foreign guardian under the foreign jurisdiction.
13 3. Recognize concurrent jurisdiction over the guardianship for a reasonable
14 period of time to permit the foreign court to release or terminate the foreign
15 guardianship and discharge the foreign guardian.
16 4. Make other arrangements that the court determines are necessary to
17 effectuate the receipt and acceptance of the foreign guardianship.
18 **(2)** APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be
19 incompetent, a minor, or a spendthrift, the court may enter a determination and
20 order appointing a guardian that specifies any powers of the guardian that require
21 court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of
22 the following:
23 (a) *Coguardians.* If the court appoints coguardians of the person or
24 coguardians of the estate under s. 54.10 (5), and unless otherwise ordered by the

1 court, each decision made by a coguardian with respect to the ward must be
2 concurred in by any other coguardian, or the decision is void.

3 (c) *Durable power of attorney.* If the ward has executed a durable power of
4 attorney before a finding of incompetency and appointment of a guardian is made for
5 the ward under this chapter, the durable power of attorney remains in effect, except
6 that the court may, only for good cause shown, revoke the durable power of attorney
7 or limit the authority of the agent under the terms of the durable power of attorney.
8 Unless the court makes this revocation or limitation, the ward's guardian may not
9 make decisions for the ward that may be made by the agent, unless the guardian is
10 the agent.

11 **(3)** (c) *Fees if guardian is not appointed.* If a guardian is not appointed under
12 sub. (2), the petitioner is liable for any fees due the guardian ad litem and the
13 proposed ward's legal counsel.

14 **54.50 Temporary guardianships. (1)** STANDARD. If it is demonstrated to the
15 court that a proposed ward's particular situation, including the needs of the proposed
16 ward's dependents, requires the immediate appointment of a temporary guardian of
17 the person or estate, the court may appoint a temporary guardian under this section.

18 **(3)** PROCEDURES FOR APPOINTMENT. All of the following procedures apply to the
19 appointment of a temporary guardian:

20 (a) Any person may petition for the appointment of a temporary guardian for
21 an individual. The petition shall contain the information required under s. 54.34 (1),
22 shall specify reasons for the appointment of a temporary guardian and the powers
23 requested for the temporary guardian, including the power specified in s. 51.30 (5)
24 (e), and shall include a petition for appointment of a guardian of the person or estate
25 or state why such a guardianship is not sought.

1 (b) The court shall appoint a guardian ad litem, who shall attempt to meet with
2 the proposed ward before the hearing or as soon as is practicable after the hearing,
3 but not later than 7 calendar days after the hearing. The guardian ad litem shall
4 report to the court on the advisability of the temporary guardianship at the hearing
5 or not later than 10 calendar days after the hearing.

6 (c) The court shall hold a hearing on the temporary guardianship. The hearing
7 may be held no earlier than 48 hours after the filing of the petition unless good cause
8 is shown. At the hearing, the petitioner shall provide a report or testimony from a
9 physician or psychologist that indicates that there is a reasonable likelihood that the
10 proposed ward is incompetent. The guardian ad litem shall attend the hearing in
11 person or by telephone or, instead, shall provide to the court a written report
12 concerning the proposed ward for review at the hearing.

13 (d) If the court appoints a temporary guardian and if the ward, his or her
14 counsel, the guardian ad litem, or an interested party requests, the court shall order
15 a rehearing on the issue of appointment of the temporary guardian within 10
16 calendar days after the request. If a rehearing is requested, the temporary guardian
17 may take no action to expend the ward's assets, pending a rehearing, without
18 approval by the court.

19 SUBCHAPTER V

20 POST–APPOINTMENT MATTERS

21 54.60 **(2)** CONTENTS OF INVENTORY. The inventory shall provide all of the
22 following information with respect to each asset:

23 (a) How the asset is held or titled.

24 (b) The name and relationship to the ward of any co–owner.

1 (c) The marital property classification of the property and, for any property that
2 is marital property, the spouse who has management and control rights with respect
3 to the property.

4 **(3)** TIME FOR FILING. The guardian of the estate shall file the initial inventory
5 within 60 days after appointment, unless the court extends or reduces the time.

6 **(4)** NOTICE OF INVENTORY. The court shall specify the persons to whom the
7 guardian of the estate shall provide copies of the inventory.

8 **(5)** FEE. The guardian of the estate shall pay from the ward's income and assets
9 the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents
10 concerning the value of the income and assets are filed.

11 **(6)** APPRAISAL. The court may order that the guardian of the estate appraise
12 all or any part of the ward's assets.

13 **54.62 Accounts.**

14 **(3)** SMALL ESTATES. (a) If a ward's income and assets do not exceed the amount
15 specified in s. 867.03 (1g) (intro.), the guardian need not file an account under sub.
16 (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph,
17 the value of the ward's income and assets does not include the ward's income, any
18 burial trust possessed by the ward, or any term or other life insurance policy that is
19 irrevocably assigned to pay for the disposition of the ward's remains at death.

20 (b) If the ward's income and assets, as calculated under par. (a), increase above
21 the amount specified in s. 867.03 (1g) (intro.), the guardian shall so notify the court,
22 which shall determine if an annual account under sub. (1) or a final account under
23 s. 54.66 is required.

24 **(4)** ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may
25 waive filing of an annual account under sub. (1) or permit the filing of a modified

1 annual account, which shall be signed by the ward's guardian and spouse and shall
2 consist of all of the following:
3 1. Total assets of the ward, as determined under ch. 766, on January 1 of the
4 year in question.
5 2. Income in the name of the ward, without regard to ch. 766, and the ward's
6 joint income.
7 3. Expenses incurred on behalf of the ward, including the ward's proportionate
8 share of household expenses if the ward and the ward's spouse reside in the same
9 household, without regard to ch. 766.
10 4. Total marital property of the ward, as determined under ch. 766, on
11 December 31 of the year in question.
12 (b) The court shall provide notice of the waiver under par. (a) to any adult child
13 of the ward.
14 **(7)** (a) The ward.
15 (b) Any guardian ad litem appointed by the court.
16 (c) Any personal representative or special administrator appointed by the
17 court.
18 **54.63 Expansion of order of guardianship; procedure. (1)** If the
19 guardian or another interested person submits to the court a written statement with
20 relevant accompanying support requesting the removal of rights from the ward and
21 transfer to the guardian of powers in addition to those specified in the order of
22 appointment of the guardian, based on an expansion of the ward's incapacity, the
23 court shall do all of the following:
24 (a) Appoint a guardian ad litem for the ward.

(b) Order that notice, including notice concerning potential court action if circumstances are extraordinary, be given to all of the following:

1. The county department of social services or human services if the ward is protectively placed or receives long–term support services as a public benefit.

2. The ward.

3. The guardian.

4. The agent under the ward's power of attorney for health care under ch. 155, if any, and the agent under the ward's durable power of attorney under ch. 243, if any.

5. Any other persons determined by the court.

(2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person submits to the court an objection to the request under sub. (1), the court may amend the order entered under s. 54.46 (2) and enter a determination and the amended order that specifies any change in the powers of the guardian.

(b) If, within 10 days after notice is provided under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), the court shall hold a hearing, unless the objector declines a hearing, under the procedure specified in s. 54.64 (2).

54.64 **(2)** REVIEW AND MODIFICATION.

(a) 1. Appoint a guardian ad litem.

2. Fix a time and place for hearing.

3. Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

(b) The ward has the right to counsel for purposes of the hearing under par. (a). Notwithstanding any finding of incompetence for the ward, the ward may retain and contract for the payment of reasonable fees to an attorney, the selection of whom is

1 subject to court approval, in connection with proceedings involving review of the
2 terms and conditions of the guardianship, including the question of incompetence.
3 The court shall appoint counsel if the ward is unable to obtain counsel. If the ward
4 is indigent, the county of jurisdiction for the guardianship shall provide counsel at
5 the county's expense.

6 **(3)** (b) The ward changes residence from this state to another state and a
7 guardian is appointed in the new state of residence.

8 (e) The ward dies.

9 **(4)** (b) The ward changes residence from this state to another state and a
10 guardian is appointed in the new state of residence.

11 **(5)** (b) Continue the guardianship, but waive requirements for a bond for the
12 guardian and waive or require an accounting by the guardian.

13 **54.66 Final accounts.**

14 **(3)** DISCHARGE. After approving the final account and after the guardian has
15 filed proper receipts, the court shall discharge the guardian and release the
16 guardian's bond.

17 **54.68 Review of conduct of guardian. (1)** CONTINUING JURISDICTION OF
18 COURT. The court that appointed the guardian or that granted a petition for
19 acceptance and receipt of a foreign guardianship has continuing jurisdiction over the
20 guardian. Within a reasonable period of time after granting a petition for receipt and
21 acceptance of a foreign guardianship under s. 54.46 (1r), the court shall review the
22 provisions of the guardianship and, as part of its review, shall inform the guardian
23 and ward of services that may be available to the ward.