

APPENDIX

Introduction

A guardian is someone appointed by a county court to have "care, custody, and control" of the person of an incompetent or to manage an incompetent's estate. (s. 880.01 (3) Stats.) A court may appoint a private non-profit corporation found suitable by the department to serve as guardian of the person or property, or both, of an adult found to be in need of guardianship (s. 880.35 Stats.), but only if no suitable individual guardian is available (s. 880.09 (2) Stats.).

Chapter HSS 85 does not apply to guardianships for "minors" and "spendthrifts" for whom courts may also appoint guardians.

A guardianship entrusted to a corporation, like one entrusted to an individual, can be full or limited, permanent or temporary (for up to 60 days), effective or pending (standby), of the person of a ward or of property or both, as the court decides.

The department will maintain a list of suitable non-profit corporations, and will make the list available to county courts and local protective services planning organizations on request.

Implicit in the department's authority to approve non-profit corporations to serve as guardians is department monitoring of corporate guardianships. The department will decertify a non-profit corporation if it is found to be no longer suitable to serve as guardian. When it makes such a determination, the department will notify the appropriate court or courts and designated local agency or agencies of the determination and of the findings on which it was based.

Rationale for the rules

Guardianship is viewed here as a distinctive responsibility which involves making critical decisions for an adult who cannot make them. Guardianship is not just another protective service. No public agency is authorized by law to serve as guardian of the person of an incompetent. Nor can a for-profit corporation, such as a proprietary nursing home, be a guardian, except that trust companies or banks which have trust powers may be appointed to manage persons' estates. Furthermore, s. 55.03, Stats., expressly prohibits an agency appointed as guardian from being a provider of protective services or placement for its ward.

A personal, one-to-one relationship between an individual guardian and ward is preferred as a general rule to a corporate guardianship. A family member is the first choice. When there is no family member, no willing family member, or no capable or otherwise suitable family member in the judgment of the court, then another individual — relative, friend, or civic-minded person — should be sought out to serve as guardian. Local agencies need to develop pools or registers of volunteers willing and capable to take one or more guardianships, and to match volunteers and wards. Courts should require documentation of efforts made by an agency or other petitioner to obtain an individual guardian before appointing a corporation to serve in that capacity.

The non-profit corporation is then an appropriate guardian when no other guardian can be found or when the circumstances of a ward are