

Chapter PW 65

NON-PROFIT CORPORATION AS GUARDIAN

PW 65.01 Non-profit corporation as guardian

PW 65.01 Non-profit corporation as guardian. (1) The proposed guardian shall be organized as a private non-profit corporation under chapters 181, 187, or 188, pursuant to section 880.35 Wis. Stats.

(2) The proposed guardian shall be "actively conducting a program" for persons in need of protective services, pursuant to section 880.35 Wis. Stats. "Actively conducting a program" is understood to mean that the corporation is engaged in public education, identification of needs, monitoring of services, general advocacy on behalf of the disability group, or that it accomplishes these functions in a more general sense as a religious or benevolent association.

(3) The proposed guardian corporation shall have been organized for at least one full year during which time it was "actively conducting a program". This can be considered evidence of relative permanence and reasonable expectation of indefinite continuation.

(4) When serving as guardian, a corporation shall not be a provider of protective services or protective placement for its ward, pursuant to section 55.03 Wis. Stats. Conversely, a corporation providing protective services or protective placement for a person shall not be appointed guardian of that person.

(5) No corporation shall accept guardianships from a court in a county in which a member of the corporation board of directors or any professional full-time employe of the corporation is a member or employe of the community board organized under sections 51.42 or 51.437, Wis. Stats., or a member of the county welfare board or employe of the county social service or welfare department.

(6) A distinction is made between 2 types of guardian corporations on the basis of the number of wards each shall be permitted. Class A corporations shall be authorized to assume full or limited guardianships for up to 20 persons at one time. Class B corporations shall serve as full or limited guardian for only one or 2 persons. Temporary and standby guardianships shall be in addition to these permanent guardianships.

(a) A waiver of the upper limit on guardianships shall be considered by the department in the case of class A corporations where special circumstances are shown to exist.

(7) The proposed Class A guardian corporation shall at all times have at least one full-time staff member who is qualified either by professional training or by experience to work with and help persons who have the specific disability.

(a) A person qualified by professional training to work with mentally retarded individuals, for instance, is the mental retardation specialist as defined by Wis. Admin. Code H 32 Nursing Home

Rules—the physician, psychologist, educator, social worker, physical or occupational therapist, or registered nurse who has had specialized training or work experience.

(8) A person employed by or otherwise associated with the non-profit corporation shall be identified as the person who, as agent of the corporation, administers the guardianship. Any change in the internal assignment of responsibility shall be communicated to the local planning agency or interagency mechanism designated under section 55.02 Wis. Stats., and to the court within 14 days following its effective date.

(9) The corporation serving as guardian shall be immediately accessible by phone during normal working hours to the local planning agency or interagency mechanism designated under section 55.02 Wis. Stats., and the person responsible on behalf of the corporation for administering the guardianship shall be readily accessible in person or by phone to the ward and to other persons concerned.

(10) A corporation shall agree in writing to submit such reports and answer such questions as the department shall require in monitoring corporate guardianships.

(11) A guardian of the person of a ward shall endeavor to secure necessary care, services and protective placement when appropriate for the ward, pursuant to section 880.38 (2) Wis. Stats.

(12) A guardian of the person of a ward who has been protectively placed has the duty of taking "reasonable steps" to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights, pursuant to section 55.06 (15) Wis. Stats.

(a) "Reasonable steps" shall mean periodic personal contact with the ward—at least once every 3 months—to ascertain whether the ward is "well treated", "properly cared for", and "provided with the opportunity to exercise legal rights".

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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) Wis. 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 individual found to be in need of guardianship (s. 880.35 Wis. Stats.), but only if no suitable individual guardian is available (s. 880.09 (2) Wis. Stats.).

Because the department's authority to make rules is derived from chapter 55, Wis. Stats., chapter PW 65 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.

Any county court or any agency planning for or providing protective services may ask the department to rule on a non-profit corporation's suitability. 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.

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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 it 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 someone else who cannot make them. Guardianship is not just another protective service. No public agency is authorized by law to serve as guardian. 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, the law expressly prohibits a private non-profit corporation from providing 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 citizen—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 exceptional or complex in terms of need for regular guidance and for a variety of services. One criterion for designation of a non-profit corporation as guardian is whether there is need for an agency in the particular case because of the extraordinary attention required by the ward which would represent too heavy a burden for most individual guardians to carry—too much of their time and more coordinating and counseling skills than they personally possess.

Where a corporate guardian is indicated, an advocacy organization is preferred. It should be guardian incidental to its other activities, and it should not have so many guardianships that its other activities become incidental to that responsibility. The department might well restrict its findings of suitability to disability-related advocacy organizations and to general advocacy organizations like churches.

The department's criteria for finding a particular non-profit corporation suitable or unsuitable to serve as a guardian include:

- (1) whether it is *capable* of performing the duties of guardian;
- (2) whether it and its staff members are *accessible and available* to the prospective ward and to other persons concerned about the ward's well-being;
- (3) whether it is a *stable organization*, i.e., whether it is likely to continue in existence for some time; and,
- (4) whether its employes, officers, or members of its board of directors are *free from even the appearance of conflict of interest*.