

Chapter HSS 85

NON-PROFIT CORPORATION AS GUARDIAN

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Note: This chapter replaces ch. PW 65.

HSS 85.01 Purpose and authority. This chapter establishes criteria by which the department determines that an applicant non-profit corporation is a suitable agency qualified to serve as guardian of the person or the property, or of both person and property, of an adult found by a court to be mentally incompetent and therefore in need of a guardian. This chapter is promulgated pursuant to ss. 55.02 and 880.35, Stats., which direct the department to make rules for this purpose.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

HSS 85.02 Definitions. As used in this chapter:

(1) "Class A corporation" means a non-profit corporation which is authorized by the department to assume full or limited permanent guardianship for no more than 20 persons at one time.

(2) "Class B corporation" means a nonprofit corporation which is authorized by the department to assume full or limited permanent guardianship for no more than 2 persons at one time.

(3) "Guardian" means a nonprofit corporation appointed by a court to advocate for an adult who is incompetent and who is further charged with the responsibility and authorized to make decisions regarding either the care, custody and control of the person of the incompetent or for management of the incompetent's estate, or both.

(4) "Incompetent" means a person determined by a court to be substantially incapable of managing his or her property or caring for self by reason of infirmities of aging, a developmental disability or a similar incapacity. A physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Limited permanent guardianship" has the meaning prescribed in ss. 880.33 (3) and 880.37, Stats.

(6) "Nonprofit corporation" has the meaning prescribed in s. 181.02 (4), Stats., namely, a corporation, no part of the income of which is distributed to its members, directors or officers, and includes a religious society organized under ch. 187, Stats., and a fraternal society organized under ch. 188, Stats.

(7) "Standby guardianship" has the meaning prescribed in s. 880.36, Stats.

(8) "Temporary guardianship" has the meaning prescribed in s. 880.15, Stats.

(9) "Ward" means an incompetent adult for whom a court has appointed a guardian.

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HSS 85.03 Criteria for suitability. Criteria by which the department finds a non-profit corporation suitable to serve as guardian of persons found by a court to be incompetent are the following:

(1) The proposed guardian shall be organized as a private non-profit corporation under chs. 181, 187, or 188, Stats.

(2) The proposed guardian corporation shall provide evidence that it is reasonable to believe that it will continue in existence indefinitely.

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

(4) No corporation may accept guardianships from a court in a county in which a member of the corporation's board of directors or any professional full-time employe of the corporation is a member or employe of the community board organized under ss. 46.23, 51.42 or 51.437, Stats., or a member of the county welfare board or employe of the county social service or welfare department.

(5) A waiver of the upper limit on guardianships for a class A corporation shall be considered by the department where special circumstances are shown to exist. Temporary and standby guardianships shall be in addition to the number of permanent guardianships permitted for both class A and class B corporations.

(6) The proposed Class A guardian corporation shall at all times have at least one full-time staff member who is qualified either by training or by experience to work with and help persons with the disability or disabilities of the ward or wards to be served, including knowledge of service needs and resources for meeting service needs.

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

(8) The corporation serving as guardian shall have sufficient staff assigned to its guardianship program to enable each staff member to adequately carry out the responsibilities of a guardian.

(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 s. 55.02, 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 about the ward's well-being.

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

(11) A corporation serving as guardian of the person of a ward shall endeavor to secure necessary care, services and protective placement when appropriate for the ward, pursuant to s. 880.38 (1) and (2), Stats.

(12) A corporation serving as guardian shall have periodic personal contact with the ward, at least once every 3 months, to ascertain the status of the ward, take necessary action to see that the ward receives needed services and to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Personal contact with a ward protectively placed under s. 55.06, Stats., shall be onsite personal contact.

(13) A corporation serving as guardian of the person of a ward shall make an annual report on the condition of the ward to the court which ordered the guardianship and to the county agency designated under s. 55.02, Stats., as required by s. 880.38 (3), Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

HSS 85.04 Withdrawal of certification. If at any time the department determines that a non-profit corporation which the department had found suitable to assume responsibility for guardianships no longer meets the criteria set out in s. HSS 85.03, the department may withdraw its finding of suitability upon 30-day notice to the non-profit corporation or former non-profit corporation, the court or courts that assigned the corporation's guardianships, the ward, his or her family, other interested parties and the county agency designated under s. 55.02, Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

HSS 85.05 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a corporation to serve as guardian may appeal that decision to the department's office of administrative hearings under ss. 227.064 and 227.07 to 227.13, Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

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

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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. When an advocacy organization is a corporate guardian, 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's criteria for finding a particular non-profit corporation suitable or unsuitable to serve as a guardian can be summed up as follows:

- (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.