

Chapter HSS 85

APPENDIX A

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 withdraw approval of 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 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 employees, officers, or members of its board of directors are free from even the appearance of conflict of interest.