

**ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health Services proposes to repeal and recreate ch. DHS 85, relating to non-profit corporations and unincorporated associations as guardians.

SUMMARY OF PROPOSED RULE

Statute interpreted

Section 55.02, Stats.

Statutory authority:

Sections 54.15 (7) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Sections 54.15 (7), Stats., provides the Department with the authority to promulgate rules to specify standards for approval of non-profit corporate guardians or unincorporated associations as guardians of a person or an estate, or both.

Related statute or rule:

Chs. 54 and 55, Stats.

Plain language analysis:

Chapter DHS 85 establishes standards for the approval of non-profit corporate guardians or unincorporated associations as guardians of a person or an estate.

In this order, the Department proposes to repeal and recreate ch. DHS 85 as follows:

1. To update the rules to reflect current standards of practice of corporate guardianships in the areas of staff qualifications and training, caregiver background checks, duties and powers of the guardian, adequacy of staff, rights of wards, contacts with wards, wards' records, and conflict of interest standards.
2. Require corporate guardians to maintain policies in the areas of abuse and neglect, misappropriation of property, grievance procedure for use by wards and interested parties, and complaint and grievance investigation.
3. Reflect the increasing number of adults in need of guardianship and increase in their acuity level.
4. Incorporate provisions limiting the number of wards a corporate guardian may have.
5. Establish standards for approval, changing ownership and closing a corporate guardianship agency and to determine whether a person is fit and qualified to operate as a corporate guardian.
6. Requires applicants to submit a written statement, with the initial application, agreeing to submit such reports and answer such questions as the Department requires to monitor the corporate guardian. This same provision is in the existing rule under s. DHS 85.03 (10). This provision was included in all drafts

of the proposed rule reviewed by the advisory committee and no objections were raised. The provision was inadvertently omitted from the proposed rule submitted to the Legislative Clearinghouse.

Summary of, and comparison with, existing or proposed federal regulations:

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states:

Illinois:

There are no administrative codes governing guardianship services in Illinois.

Iowa:

In Iowa, counties provide guardianship services for individuals who do not have a suitable family member or interested person who will act as guardian. The rules governing guardianship are found in probate laws and include general provisions concerning the determination of incompetency of the proposed ward, the petition of appointment of guardian, the notice to the proposed ward and representation of the ward at the hearing. In addition, the rules provide for the notification of guardianship powers including providing for the care of the ward, managing the ward's personal property, assisting the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed and ensuring that the ward receives necessary emergency medical services. The rule also provides for the appointment of a conservator, temporary conservator, standby conservator and liability of conservators.

Iowa code, 633.551 to 633.701 contains rules governing the provision of guardianships and conservatorships.

Michigan:

Michigan has established an administrative rule governing the provision of public guardianship services for persons with mental retardation. The rule establishes standards for the determination of the need for guardianship, standards for informed consent and the admission procedures into a facility. The rule provides for emergency guardianship, the circumstances under which the provision may be applied and the powers of the emergency guardian. The rule also includes standards for a facility or program in guardianship proceeding, guardianship for minors and termination or modification of guardianship orders.

Administrative Code Section: Mich. Adm. Code R. 330.6006 to 330.6031 contains rules governing the provision of guardianship to persons who are designated mentally retarded.

Minnesota:

Minnesota has established an administrative rule governing the provision of public guardianship services for a person with mental retardation. The rule establishes standards related to the process used to appoint a public guardian, the limitations of the guardian's powers and duties and standards for consent determinations. The duties of the public guardian are outlined in rule and include determining the ward's place of residence consistent with the ward's best interests, making provisions for the ward's care, comfort, medical, social and recreational needs, taking reasonable care of the ward's property and

approving or withholding approval of any contract the ward makes. Special duties of the guardian such as visiting the ward at least twice a year, taking action and making decisions encouraging the least restrictive effect on the ward's personal freedom and encouraging maximum self-reliance on the part of the ward are also included in the rule. The rule provides standards related to non-delegated consent, non-delegated consent requiring a court order and the process for modification or termination of public guardianship. No administrative rule could be found for guardians for persons who are not mentally retarded.

Administrative Code Section: Minn. R. 9525.3010 to 9525.3100.

Summary of factual data and analytical methodologies:

The Department relied on all of the following sources to draft the proposed rule and to determine the impact on small businesses.

- The Department formed an advisory committee consisting of representatives from the Disability Rights Wisconsin, Inc., the Wisconsin Guardianship Association, the Coalition of Wisconsin Aging Groups, the Board on Aging and Long Term Care, County Adult Protective Services staff including County Departments of Social Services, Human Services, Community Programs, County Registers in Probate and Department staff. The advisory committee reviewed the initial draft of the rule and provided comments. The rule was revised based upon the comments made by the advisory committee.
- The Department held four listening sessions with wards in Eau Claire, Fort Atkinson, Green Bay and Milwaukee to gain their perspective on corporate guardianship services. The information obtained from wards was shared with the advisory committee for comment. The views of wards were given the same consideration as the views expressed by other members of the Advisory Committee when drafting rule language. For example, comments from wards related to frequency and location of visits with their guardian, notification of rights and grievance procedure, involvement of wards in decision making and other areas in which wards expressed comment, are reflected in the proposed rules.
- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. Census Bureau every 5 years for each year ending in “2” or “7” contains the latest available economic data compiled from businesses located in Wisconsin.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of the rulemaking, 2007 is the index year. The consumer price index is compiled by the U. S. Department of Labor, Bureau of Labor Statistics and for 2007 is 4.2 percent.
- Section 227.114(1)(a), Stats., defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has a gross annual sales of less than \$5,000,000.

- The DHS database that contains demographic, program and approval information for non-profit corporate guardians.

Analysis and supporting documents used to determine effect on small business:

The North American Industry Classification System (NAICS) includes Corporate Guardianships in the Professional, Scientific, and Technical Services sector (sector 54) and further defined in sub-sector 54119 Other Legal Services. This industry comprises establishments of legal practitioners (except lawyers and attorneys) primarily engaged in providing specialized legal or paralegal services. The 2002 census lists 216 entities with total revenue over \$25 million. Corporate guardians are a small portion of this sub-sector.

In November 2006, the Division of Quality Assurance (DQA) conducted a survey of the 72 corporate guardianship agencies operating in Wisconsin at that time. Partnering with the Wisconsin Guardianship Association, Coalition of Wisconsin Aging Groups and Disability Rights Wisconsin, Inc., DQA developed a survey that focused on key sections of the rule that had been identified for possible revision. The survey asked questions about the number and type of wards served, services provided, agency staffing, contact with wards, staff training, criminal background checks conducted by the agency and the operational structure. Over 50 percent of the agencies responded to the survey.

Data from DHS datasets lists 72 corporate guardians in Wisconsin.

Available data implies that most corporate guardians should be considered small business as defined in Section 227.114 (1), Stats. Guardianships must be chartered as a non-profit entity authorized to conduct business in Wisconsin. DHS conducted a survey of corporate guardians with more than 50 percent of the agencies responding. DHS approves the number of wards that an agency can serve. The results of the survey reveal that 80 percent of agencies serve less than 100 wards.

Number of Wards Served	Percent of Agencies
20 Wards or less	52.00%
21 - 99 Wards	30.00%
100 or more Wards	18.00%

Financial data for corporate guardianships is not readily available. Based on an agency with 100 wards and 6 guardian representatives the following potential increased costs from ch. DHS 85 were identified:

- The proposed rule requires agencies to conduct criminal background checks for all employees who have contact with wards. The cost for the background check and staff time to complete the review is estimated at \$22.00 per review. For an agency with 6 guardian representatives the cost will be \$132.00 every 4 years (6 x \$22) or \$33.00 annually. The proposed rule requires background checks on paid staff only, volunteers are exempt. Based on DQA survey results, over half of the responding agencies indicated that background checks are already being performed on paid staff. Some agencies also complete criminal background checks on their volunteers.
- The proposed rule will require that each new guardian representative receive initial training regarding their job responsibilities including information about the needs and services for wards they are assigned to, information about local resources to meet the needs of wards, prevention and reporting of abuse, neglect and misappropriation of property, ward's rights and the agency's policies and procedures including their grievance procedure. The rule does not require a specific

number of hours for this training, however, initial training is estimated to require up to 40 hours. The cost of training is estimated at \$28.00 per hour totaling \$1,200 for each new guardian representative (40 x \$28). It is estimated that one new guardian representative will need this training at an average agency each year.

- The proposed rule will require that each guardian representative complete 20 hours of continuing education training every 24 calendar months. Costs for training are estimated on 10 hours of continuing education training provided each year for 6 guardian representatives. Continuing education training is estimated to cost \$56.00 per hour each for 6 guardian representatives totaling \$3,360.00 (60 x \$56) annually. A large number of guardian representatives hold assorted credentials (social workers, attorneys, etc.) and are required by their licensure status to accrue a number of continuing education credits annually. These continuing education credits may be used to meet the requirement for continuing education in the proposed rule. Based on DQA survey results, many agencies already provide between 17 – 20 hours of training annually, exceeding the proposed rule.
- The proposed rule will require agencies to have a photograph of each ward in its file. It is estimated that this requirement will cost \$3.00 per ward. Options include a digital camera at \$100.00, a disposable camera and 24 prints at \$15.00, or individual passport photos at \$3.00 per photo.

The Wisconsin Guardianship Association (WGA) is planning to offer training and workshops to all nonprofit corporate guardian agencies on meeting the new standards in the proposed rule. This training will include sample policies and procedures that agencies may choose to use and adapt to meet their agency's program. The WGA will also sponsor regular training/educational conferences for guardian representatives to meet the continuing education training requirement.

Many corporate guardians charge fees to wards or to counties for services provided. As costs for providing these services increase, including additional costs from revisions in ch. DHS 85, fees may also be adjusted. It is unknown if the costs identified above will exceed the current consumer price index of 4.2 percent for any given agency, no single requirement appears to exceed this criteria. The fiscal impact of these additional requirements does not appear to be significant and will vary directly with the size of the agency. Agencies have the ability to increase fees charged to the wards or via the county court system; the overall effect of these proposed increases on corporate guardian agencies should be minimal.

Effect on small business:

Data from DHS data sets list 72 Corporate Guardianships in Wisconsin at this time. These entities must be "nonprofit Corporations" as defined in s.181.0103 (17), Stats., namely a corporation, no part of the income which is distributed to its members, officers, or directors. The Department of Financial Institutions also requires corporate guardianships to be non-stock corporations. The fiscal impact of the requirements noted above does not appear to be significant and will vary directly with the size of the agency. Agencies have the ability to increase fees charged to their wards or via the county court system; the overall effect of these proposed increases on corporate guardian agencies should be minimal. It is unknown if the costs identified above will exceed the current consumer price index of 4.2 percent for any given agency, no single requirement appears to exceed this criteria.

Agency contact person:

Pat Benesh, Quality Assurance Program Spec-Senior
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1 West Wilson St.
Room 534
Madison, WI 53701
Phone: 608-264-9896
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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. DHS 85 is repealed and recreated to read:

Chapter DHS 85 NON-PROFIT CORPORATIONS AND UNINCORPORATED ASSOCIATIONS AS GUARDIANS

Subchapter I – General Provisions

DHS 85.01 Purpose and authority.
DHS 85.02 Applicability.
DHS 85.03 Definitions.
DHS 85.04 Waivers and variances.

Subchapter II – Approvals

DHS 85.05 Application.
DHS 85.06 Criteria for approval.
DHS 85.07 Change of ownership.
DHS 85.08 Corporate guardian closing.

Subchapter III – Personnel

DHS 85.09 Staff.
DHS 85.10 Training.
DHS 85.11 Staffing.
DHS 85.12 Conflict of interest.

Subchapter IV - Ward Services

DHS 85.13 Rights of wards.
DHS 85.14 Duties.
DHS 85.15 Records.

Subchapter V – Withdrawal of Approval

DHS 85.16 Actions affecting approval.
DHS 85.17 Appeal of decisions.

DHS 85.01 Purpose and authority. This chapter is promulgated under the authority of ss. 54.15 (7), Stats., and 227.11 (2) (a), Stats., to establish the criteria by which the department determines whether a private nonprofit corporation organized under ch. 181, 187, or 188, Stats., or an unincorporated association is suitable to perform the duties of a guardian of the person, or of the estate, or both, of a proposed ward.

DHS 85.02 Applicability. This rule applies to private non-profit corporations or unincorporated associations applying to the department for consideration of suitability to perform the duties of guardian of a person or of an estate, or both, of a proposed ward.

DHS 85.03 Definitions. As used in this chapter:

(1) “Applicant” means a private nonprofit corporation or an unincorporated association that applies to the department for a finding of suitability to perform the duties of a corporate guardian.

(2) “Corporate guardian” or “guardian” means a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian.

(3) “Department” means the Wisconsin department of health services.

(4) “Guardian of the estate” has the meaning given under s. 54.01 (11), Stats.,

(5) “Guardian of the person” has the meaning given under s. 54.01 (12), Stats.

(6) “Guardianship program” means a system that is established by a corporate guardian to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of its wards under ch. 54, Stats.

(7) “Guardianship program manager” means an employee designated by a corporate guardian, who is responsible for the management and day-to-day operation of the guardianship program.

(8) “Guardian representative” means an individual assigned by a guardian to perform the functions of the guardian of the person under s. 54.25 (1) and (2), Stats., or of the estate under ss. 54.19 and 54.20, Stats., or both, of a ward.

(9) “Successor guardian” has the meaning given in s. 54.01 (35), Stats.

(10) “Unincorporated association” is an organization organized under ch. 184, Stats.

(11) “Ward” has the meaning given under s. 54.01(37), Stats.

DHS 85.04 Waivers and variances. (1) DEFINITIONS. In this section:

(a) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS AND VARIANCES. The department may grant a waiver or variance of a requirement of this chapter to the corporate guardian if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any ward and meet any of the following conditions:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the ward.

(b) An alternative to a requirement, including a new concept, method, procedure or technique, other equipment, other personnel qualifications, or the conducting of a pilot project, is in the interests of better care or management.

(3) APPLYING FOR A WAIVER OR VARIANCE. A corporate guardian may apply for a waiver or variance at any time. Each request shall be made in writing to the department and include all of the following:

(a) The rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific proposed alternative action.

(d) The reasons for the request.

(e) Justification that a requirement under sub. (2) would be satisfied.

(f) Any other information requested by the department.

(4) DEPARTMENT DECISION. (a) The department shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

(b) The terms of a requested variance may be modified upon agreement between the department and the corporate guardian.

(c) The department may impose conditions on the waiver or variance which it deems necessary.

(d) The department may limit the duration of a waiver or variance.

(5) HEARINGS. (a) Denial of a request for a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

(b) The applicant shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(6) REVOCATION. The department may revoke a waiver or variance for any of the following reasons:

(a) The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the wards.

(b) The guardian has failed to comply with the waiver or variance as granted.

(c) The guardian notifies the department in writing of the desire to relinquish the waiver or variance and be subject to the requirement previously waived or varied.

(d) Revocation is required by a change in law.

SUBCHAPTER II – APPROVALS

DHS 85.05 Application. In this chapter: Only a private nonprofit corporation or an unincorporated association may apply to the department for a determination that the corporation or association is suitable to perform the duties of a guardian. A corporation or association applying for such a determination shall apply to the department on an application form provided by the department. The applicant shall submit the completed application and all of the following to the department:

(1) The filed endorsement of the Articles of Incorporation submitted to the Wisconsin department of financial institutions, if applicable.

(2) A copy of the applicant's written grievance procedure for use by wards and interested parties.

(3) A business plan that includes staffing projections.

(4) A statement agreeing in writing to submit such reports and answer such questions as the department shall require in monitoring a corporate guardian.

(5) Any additional information requested by the department.

Note: Copies of the application form can be obtained at <http://dfhs.wisconsin.gov/rIDSL/corptguardn> or by contacting the Division of Quality Assurance at P. O. Box 2969, Madison WI 53701-2969.

85.06 Criteria for approval. The department may not approve an applicant until the department determines the applicant is fit and qualified to receive a determination of suitability to perform the duties of a corporate guardian. In determining whether an applicant is fit and qualified, the department may consider all of the following:

(1) Compliance history with Wisconsin's or any other state's licensing requirements and with any federal certification requirements, including any license revocation or denial.

(2) Arrest history and criminal record, including any of the following:

(a) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person.

(b) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance.

(c) Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons.

(d) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility or agency.

(3) Financial stability, including all of the following:

(a) Financial history and financial viability of the owner or related organization.

(b) Outstanding debts or amounts due to the department or other government agencies, including unpaid forfeitures and fines.

DHS 85.07 Change of ownership. (1) If a corporate guardian sells or otherwise transfers ownership of the corporation or the association, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the final transfer of ownership. This notice shall include the name and contact information of the new corporation.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

DHS 85.08 Corporate guardian closing. (1) If a guardian is a corporation and the corporation's corporate status is revoked by the department of financial institutions or is voluntarily or involuntarily dissolved, or if the guardian is an unincorporated association and the association's status is voluntarily or involuntarily dissolved by the members or a court, or becomes inactive, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county

department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the corporation closes.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

SUBCHAPTER III - PERSONNEL

DHS 85.09 Staff. (1) **GUARDIANSHIP PROGRAM MANAGER** (a) The guardian shall designate an employee who is 21 years or older and is fit and qualified under s. 50.03 (4), Stats., to manage its guardianship program.

(b) The guardianship program manager shall have a high school diploma or its equivalent and have at least 3 years of relevant experience.

(c) The guardianship program manager shall be responsible for the ongoing training and competency of all employees.

(d) Any change of guardianship program manager shall be communicated to the department and the county department designated under s. 55.02 (2), Stats., within 14 days following the effective date of the change.

(2) **OTHER EMPLOYEES.** (a) Except as provided in sub. (1) (a) each employee shall have the skills, education and ability to fulfill the employee's job requirements.

(b) An employee that has direct contact with a ward shall be at least 18 years old.

(3) **BACKGROUND CHECK.** At the time of hire, employment or contract and every four years after, the corporate guardian shall conduct and document a caregiver background check on each employee following the procedures in s. 50.065, Stats., and ch. DHS 12. A guardian may not employ or contract with a person who has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s. 50.065, Stats., unless the person has been approved under the department's rehabilitation review process as defined in ch. DHS 12.

(4) **EMPLOYEE RECORDS.** A separate record for each employee shall be maintained, kept current, and include all of the following:

(a) A written job description including duties, responsibilities and qualifications required for the employee.

(b) Beginning date of employment.

(c) Educational qualifications and relevant experience.

(d) The results of the background checks required under sub. (3).

(e) Documentation of training.

(5) VOLUNTEERS. The guardian may use volunteers if the volunteer receives the orientation and training necessary to assure the health, safety and welfare of wards.

DHS 85.10 Training. (1) INITIAL TRAINING. Before performing the duties of a guardian, each guardian representative shall receive training that includes all of the following:

(a) Job responsibilities.

(b) Prevention and reporting of ward abuse, neglect and misappropriation of ward property.

(c) Ward's rights and grievance procedures contained in chs. 54 and 55, Stats., s. DHS 85.13, and ch. DHS 94.

(d) Information regarding the needs and services for each ward for whom the guardian representative is responsible.

(e) Information about local resources available to meet the needs of wards.

(f) Agency policies and procedures.

(2) CONTINUING EDUCATION. Each guardian representative shall complete 20 hours of training every 24 calendar months. The training shall be relevant to the guardian representative's job assignment and designed to increase the effectiveness of the employee to meet the needs of the wards served.

DHS 85.11 Staffing. (1) The guardian shall at all times have an adequate number of staff who are qualified either by training or by experience to meet the needs of its wards, including knowledge of service needs and resources for meeting service needs.

(2) The guardian representative shall be accessible to the ward and to other persons concerned about the ward's well-being.

(3) The corporate guardian shall have staff available at all times to respond to an emergency situation as defined in s. DHS 94.02 (14).

(4) The corporate guardian shall have staff accessible to the local planning agency or interagency mechanism designated under s. 55.02, Stats.

DHS 85.12 Conflict of interest. (1) The corporate guardian may not be subject to undue influence from any party.

(2) When the corporate guardian is a part of a larger organization, the corporate guardian shall have designated staff with independent decision-making authority about the guardianship program.

(3) Pursuant to s. 55.03 (1), Stats., a guardian may not be a provider of protective services or protective placement for its ward.

(4) No corporate guardian may accept a guardianship from a court in a county in which a member of the corporate guardian's board of directors or any employee or volunteer of the corporate guardian is a member or employee of the community board organized under s. 46.23, 51.42 or 51.437, Stats., or an employee of the county department of social services or human services or community programs or county board of supervisors or department of aging or a county court commissioner who hears petitions for guardianship or a member of a medicaid managed care organization.

(5) A corporate guardian may not profit from their ward.

(6) The guardian may not commingle personal or corporate funds with the funds of the ward. The guardian may consolidate and maintain wards' funds in accounts with other wards' funds if the guardian keeps separate and complete accounting of each ward's funds.

(7) Pursuant to s. 54.18 (3) (b), Stats., the corporate guardian may not lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(8) The corporate guardian may not engage in any financial transaction involving the ward's estate except as permitted under ch. 54, Stats., and this chapter.

SUBCHAPTER IV – WARD SERVICES

DHS 85.13 Rights of wards. (1) **WARDS' RIGHTS** Every ward shall have the right to all of the following in relation to the corporate guardian:

(a) Be treated with respect and dignity by the staff and volunteers of the corporate guardian.

(b) Be free from abuse, mistreatment, neglect and misappropriation of property.

(c) Confidentiality of health and personal information and records, except to the extent the corporate guardian may be authorized under the guardianship order to give informed consent to disclosure.

(d) Be informed of the services provided by the corporate guardian agency.

(e) Be consulted about decisions on the ward's behalf, to the extent the ward is capable.

(f) Have guardianship services provided in a way that is least restrictive as defined in s. 54.01 (18), Stats.

(g) Communicate freely with the advocates of the ward's choice.

(h) File a grievance or a complaint without retaliation.

(2) COMPLAINTS. Any person may file a complaint with a corporate guardian or the department regarding the operation of a corporate guardian. The department may investigate a corporate guardian as it deems necessary.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm>

DHS 85.14 Duties. (1) The guardian representative shall meet with the ward within 14 days of the court appointment as corporate guardian. At the first meeting, the guardian representative shall complete all of the following:

(a) Explain to the ward the role of the guardian.

(b) Explain the guardianship determination and order including the rights addressed by the court. The guardian representative shall be familiar with the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained. The guardian representative shall explain to the ward the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained.

(c) Explain the applicable rights of the ward contained in ss. 54.18 (1), 54.25 (2), 54.42 and 55.10 (2), Stats., s. DHS 85.13 and the rules of the residence.

(d) Explain how to file a grievance and how to obtain a written copy of the grievance procedures for the living arrangement or for a service provider and the guardianship program.

(e) Explain how to file a complaint with the department and provide the ward with the department's toll-free complaint telephone number and the address and telephone number of the department's division of quality assurance.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm>

(2) The guardian representative shall notify relevant agencies and individuals of the appointment guardianship and shall provide letters of guardianship to the ward's service providers and others, as necessary.

(3) If a medical evaluation was not completed within the past year, the guardian shall obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate treatment provider.

(4) The guardian representative shall fulfill the duties of a guardian of person pursuant to ss. 54.18 (2) and (3) and 54.25 (1), Stats. The guardian representative shall fulfill the powers assigned by the court and shall exercise only those powers granted to the guardian representative by the court pursuant to s. 54.25 (2), Stats. A guardian representative shall be aware of and, if applicable, advocate for the ward's rights under ss. 50.09 and 51.61, Stats., and shall advocate for the least possible restrictions on the ward's liberty and exercise of constitutional and statutory rights, pursuant to ss. 54.18 (2) and 54.25 (2) (d) 3., Stats.

(5) A guardian representative of the estate shall fulfill the duties of a guardian of the estate pursuant to ss. 54.18 (2) and (3), 54.19, and 54.20 (1), Stats. A guardian representative shall fulfill the powers assigned by the court pursuant to s. 54.20, Stats., and shall seek court approval for those powers requiring court approval pursuant to s. 54.20 (2), Stats. In seeking compensation or reimbursement from the ward's funds, a guardian representative shall ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(6) A corporate guardian shall obtain court approval prior to receiving any compensation or reimbursement from the ward's funds, pursuant to s. 54.72, Stats. In seeking compensation or reimbursement from the ward's funds, a corporate guardian must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(7) For a guardian of person, the guardian representative shall have face-to-face contact with the ward at least once every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall visit the ward in their residence at least annually.

(8) For guardian of estate, the guardian representative shall have personal contact every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall have face-to-face contact with the ward at least annually.

DHS 85.15 Records. (1) The corporate guardian shall maintain a separate file for each ward including all of the following information and documents as applicable:

(a) Name, date of birth, address, telephone number, and social security number. Guardians of person shall also maintain information regarding the ward's medical coverage, physician, diagnoses, medications, and allergies to medications.

(b) A current photograph of the ward.

(c) All relevant legal documents involving the ward.

(d) Advance directives.

(e) A list of key contacts.

(f) A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.

(g) Documentation of all ward and collateral contacts, including the date, time, and activity.

(h) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.

(i) A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.

(j) Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.

(k) Documentation of the ward's known values, preferences, and wishes regarding medical and other care and services including all advanced directives made prior to guardianship, and financial matters and other services.

(L) A personal and social history of the ward including a family history.

(2) If guardianship is transferred, the corporate guardian shall transfer the original record required in this section to the successor guardian.

SUBCHAPTER V – WITHDRAWAL OF APPROVAL

DHS 85.16 Actions affecting approval. (1) If at any time the department determines that a corporate guardian no longer meets the criteria under this chapter, the department may withdraw its approval upon 30 day written notice to all of the following:

(a) Corporate guardian.

(b) All courts that assigned the corporate guardian's guardianships.

(c) The ward.

(d) The ward's family.

(e) Any other interested parties.

(f) The county department designated under s. 55.02, Stats.

(2) The corporate guardian shall comply with the provisions in s. DHS 85.08 (2) regarding a corporate guardian closing.

DHS 85.17 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a private non-profit corporation or an unincorporated association for corporate guardianship may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats. The request for a hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when the request is received by that division.

Note: To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707.

SECTION 2. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health Services

Dated: April 13, 2010

Karen E. Timberlake, Department Secretary

SEAL: