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# GUARDIANSHIP TUTORIAL

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## INTRODUCTION

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A guardian is an individual appointed by the Court to make ongoing decisions for an individual who has been determined by the Court to be unable to appropriately handle matters related to his/her care, safety and/or financial and property affairs.

**This tutorial specifically identifies the duties and responsibilities for individuals serving as guardians in Outagamie County only and all guardians are expected to follow the guidelines set forth in this tutorial. This tutorial does not replace state mandated training.**

All proposed guardians will be expected to read the tutorial BEFORE appointment (or prior to acceptance of transfer of venue) and sign a document acknowledging the tutorial was read. Guardians and prospective guardians will be strongly encouraged to attend group training sessions that will be available at different times throughout the year should they desire additional training or assistance.

**Purpose:** The tutorial has been designed for the purpose of assisting guardians to better understand their duties as guardian of person and guardian of estate. In this tutorial, the following information will be explained:

- guardianship terminology: commonly used terms and titles
- how a guardian is appointed
- general responsibilities
- duties of guardian of estate
- duties of guardian of person
- final duties of the guardian
- helpful hints
- general resource information

While this tutorial is intended to provide guardians in Outagamie County with guidance relating to the expectations and guidelines for their role as a guardian, it should not be considered as legal advice. A list of “Resources for Guardians” appears at the end of this tutorial. A guardian requiring assistance beyond what the County can provide may wish to consider consulting a private attorney.

Please note this tutorial does not address the duties of a Power of Attorney. A guardian is not the same as a Power of Attorney and the terms are not interchangeable.

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## GUARDIANSHIP TERMINOLOGY

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**ADRC**-- Aging and Disability Resource Center

**AFH**-- Adult family home, up to four non-related individuals living together. There are two types of AFH:

- The traditional or owner occupied (OO): the owner of the home assists non-related individuals. Either the County or Managed Care Organization typically certifies the traditional AFH. If the traditional home serves more than two individuals, the State of Wisconsin Division of Quality Assurance must license the home.
- Corporate: an agency provides shift staff to provide assistance in individuals. These are typically three to four bed homes and licensed by the State.

**Adversary Counsel**-- The attorney appointed by the Court to represent the ward's wishes if the ward is objecting to a guardianship related court proceeding.

**Annual Accounting**-- The guardian(s) must complete a detailed accounting of how the ward's money was managed. This accounting is due by **April 15** of each year and **MUST** be completed by the guardian(s). The accounting requires all income be reported and how the money was disbursed (spent) along with total assets on hand at the end of the accounting period.

**Assisted Living**-- A generalized term used for a supported living arrangement, which includes AFH, RCAC, and CBRF.

**CBRF**-- Community based residential facilities, as referred to as a group home, with five (5) or more unrelated people living together. The State of Wisconsin Department of Quality Assurance (DQA) licenses the CBRF.

**Chapter 51**--The chapter of the Wisconsin State Statute that explains a mental health commitment process.

**Chapter 54**-- The chapter of the Wisconsin State Statute that explains the guardianship process.

**Chapter 55**-- The chapter of the Wisconsin State Statute that explains a protective placement process and protective services.

**Conservator**-- A legally appointed representative for an individual's finances.

**Corporation Counsel**--The attorney (legal office of the County) that represents the Outagamie County Dept. of Health and Human Services. Also known as Corp Counsel.

**DHHS**-- Department of Health and Human Services.

**GAL or Guardian ad Litem**--The attorney appointed by the Court to represent the ward's best interests. The ward/guardian cannot choose the GAL.

**Guardian**-- An individual or agency appointed by the Court to act in the ward's best interests. This may include making decisions for health care, living environments and managing financial and property affairs.

- **Co-Guardian**-- 2 individuals appointed by the Court to act individually or together in the ward's best interest.
- **Standby Guardian**-- An individual appointed by the Court to act in the ward's best interest when guardian(s) can no longer act. Until the Court activates Standby, he/she has no legal authority to act.
- **Successor Guardian**-- An individual(s) appointed by the court upon the death, removal, or resignation of the acting guardian.
- **Temporary Guardian**-- An individual(s) appointed by the court for a limited time period with specific duties.

**Interested Parties**-- Individuals that the petitioner has involved in the process. This may include, but not limited to spouse, adult children, parents, siblings, and POA Agents.

**IRIS**-- Include, Respect, I Self-Direct. A program for self-directed long-term supports. The member or guardian is responsible for managing services and supports within an individual budget and guidelines of allowable supports and services to meet the needs. Must be eligible for Medicaid, functionally in need of nursing home or Intermediate Care Facility (Does not mean the person must be in or go to such facility).

**OUTAGAMIE COUNTY:** Advocates 4U, TMG, Connections, MILC

**Irrevocable Funeral Trust (Policy)** -- A policy established through a Funeral Home to pre-pay funeral expenses upon death. This policy is exempt from Medicaid and cannot be accessed before time of death.

**Managed Care Organization (MCO)**-- Organization contracted with the State of Wisconsin to provide long-term care services for individuals with disabilities and elderly. Various programs are available to individuals:

- **Family Care** -- Publicly funded program that helps frail seniors and adults with disabilities manage health, medical and long-term care needs. An individual must be on Medicaid to qualify.

**OUTAGAMIE COUNTY:** Community Care, Inc. and Lakeland Care, Inc., Inclusa

- **Partnership**-- Publicly funded program that helps frail seniors, adults with disabilities manage health, medical, and long-term care needs. This program has specific providers that must be used. The care team also includes a nurse practitioner that coordinates with medical professionals. An individual must be on Medicaid to qualify.

**OUTAGAMIE COUNTY:** Community Care Family Care Partnership

**Medicaid, also known as MA/Medical Assistance/Title 19**-- A government insurance program for individuals. In order to qualify individuals must ongoing meet assets requirements. Currently the limit is \$2,000 in total assets, unless on MAPP (Medicaid Assistance Purchase Plan), Katie Beckett, or Badgercare.

**Medicare**-- A federal entitlement program for citizens over the age of 65 and individuals with disabilities. This covers parts A, B, C, and D.

- **Part A:** Hospital coverage.
- **Part B:** Outpatient medical services.
- **Part C:** A network plan (Medicare Advantage) that the federal government pays for private health coverage.
- **Part D:** Covers outpatient prescription drugs through private plans.

**Ombudsman**-- A person who protects and promotes the rights of long-term care recipients, working with consumers and their families to achieve quality care and quality of life. The Ombudsman Program, by statute, has authority to obtain access to all residents and tenants of Wisconsin nursing homes, CBRFs, RCACs and those involved in Family Care & Partnership programs.

**Protective Placement**-- A procedure (and resulting Order) under Chapter 55 of the Wisconsin Statutes whereby the Court directs placement of a ward who is under guardianship to a particular placement facility or to a particular type of care facility based upon the care needs of the individual.

**Protective Services**-- Court ordered services for individuals determined to be incompetent.

**RCAC**-- Residential Care Apartment Complex.

**Register in Probate (Probate)**-- The Outagamie County office responsible for maintaining legal records for all guardianship, protective placements or mental health matters. An individual from this office is required to clerk all hearings related to the above matters. The office is also responsible for ensuring guardians complete the required annual accounting and condition of the ward. While this office may answer questions about how to complete the annual accountings, they cannot assist in completing the accountings. This office is responsible for reviewing and approving the accountings, therefore it is a conflict of interest to complete the forms. All records are kept sealed or confidential and not open for public inspection.

**Representative "Rep" Payee** -- A term used for the person assigned to manage social security benefits. This term cannot be interchanged with Guardian of Estate.

**Room and Board**-- A monthly payment for living expenses the ward is responsible for which includes rent, groceries, and utilities while living in the home of another. The Monthly Budget Expense Breakdown form needs to be Court approved before making any room and board payments.

**SNF**-- Skilled nursing facility, also known as a nursing home.

**SSA**-- Social Security Administration. There are multiple forms of benefits from this agency:

- Social Security (SS)
- Supplemental security Income and Medicaid (SSI)
- Supplemental Security Income-Exceptional Expense (SSI-E) – assessment needed.
- Social Security Disability Insurance (SSDI)

**Substitute Living Arrangement**-- Any type of residential placement that is not owned or leased by the ward (adult family home, group home, skilled nursing home, etc).

**Ward**-- An individual for whom a guardian has been appointed.

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## HOW A GUARDIAN IS APPOINTED

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Only the court is able to make a determination that an individual is incompetent and order the appointment of a guardian. The process to determine if a guardianship is needed and how a guardian is appointed is explained below. While a wide variety of circumstances may prompt the need for a guardianship, the following briefly explains the standard practice.

- A physician, psychiatrist or psychologist evaluates an individual. The doctor completes testing on the individual and makes a written recommendation as to the need for guardianship. The Courts will not accept a report from a Nurse Practitioner.
- Based on that evaluation and the need for guardianship, a suitable candidate is sought to become the proposed guardian. The proposed guardian must undergo a Department of Justice criminal background check and, if being nominated as guardian of estate, a full credit report must be submitted.
- An ***Acknowledgment Regarding Guardian Tutorial*** is also signed, confirming the proposed guardian has reviewed this Guardianship Tutorial.
- The proposed guardian must complete a notarized the ***Statement of Acts by Proposed Guardian and Consent to Serve as Guardian*** (GN-3140), a State form disclosing any past or current legal issues and confirming they understand the expectations of completing the required annual reports.
- A petition is filed with the Court outlining the need for guardianship, the information of the proposed guardian and identifying all interested parties in the matter. The Statement of Acts, background and credit checks, and Tutorial Acknowledgment Statement are included with the petition. In some circumstances, a Monthly Budget Expense Breakdown Form will be required by the court before the hearing. A hearing date is scheduled, with all parties receiving notice at least ten (10) days prior to the hearing.

- A Guardian ad Litem is appointed for the individual, to ensure the individual's rights are protected and to represent the best interests of the individual. In most cases, the ward will be responsible for the Guardian ad Litem bill for services.
- If the individual objects to the proposed guardianship, the Guardian ad Litem will be responsible for obtaining Adverse Counsel on behalf of the individual.
- The hearing is held before a Circuit Court Judge. Upon receiving reports and hearing testimony, the Court makes a ruling on the issue of incompetency and need for a guardian.
- Department of Health and Human Services or Private Attorney will send out letters of Guardianship to all parties following the court hearing.

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## **GENERAL GUARDIANSHIP RESPONSIBILITIES**

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- The appointed guardian must have Letters of Guardianship electronically signed by the Court to be recognized as the legal guardian. The guardian should try to safeguard all original Letters of Guardianship (banks, doctor's offices, Social Security Administration, etc. may make copies).
- Provide interested parties with COPIES of Letters of Guardianship (i.e.: property owners, utilities, medical providers, ward's employers, insurance providers, pension companies, residential providers, Managed Care Organization, IRIS Consultant Agency).
- Never represent yourself as the ward.
- Read all paperwork provided to you at the Court hearing within 72 hours.
- Notify the Register in Probate and DHHS of changes of address and telephone numbers of guardian and ward.
- Respect confidentiality of ward.
- Use all required statutory forms or forms provided by Register in Probate office. When in doubt, please contact Register in Probate office. [www.wicourts.gov](http://www.wicourts.gov)
- Consent to the release of confidential information and records.
- Receive all notices on the ward's behalf.
- Act in all proceedings as an advocate for the ward's best interest.
- Required to visit the ward in the home setting 1 time a year and have a face to face meeting with the ward at least once every three months.
- Maintain routine collateral (phone, email, mail, etc) contact with the ward and/or service providers monthly.
- Never informally transfer your duties as guardian to another person; this requires a formal process with the Outagamie County Courts.
- Provide updated criminal background check and credit check every 4 years to the Register in Probate Office.
- Follow all Court orders.

The Court may appoint the same person as guardian of person and estate OR may appoint two different individuals, one as guardian of estate and one as guardian of person. The Court may also appoint two individuals to act together as co-guardians. While co-guardians may be authorized by the Court to act individually when necessary for convenience purposes, they are expected to consult with one another in regards to effectively meeting the ward's needs.

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## GUARDIAN OF ESTATE

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The **Guardian of Estate** has the authority to make all decisions relating to the financial and property affairs for the ward.

### **Responsibilities:**

- Locate, itemize and receive all income (wages, Social Security benefits, Veteran's benefits, retirement benefits, etc).
- Locate and itemize all financial accounts (checking, savings, pension, CDs, money markets, insurance policies and burial trusts, etc.).
- Locate and itemize all real estate holdings and vehicles (cars, boats, motorcycles, snowmobiles, etc).
- All joint accounts owned by the ward and another individual must be separated. There is absolutely no co-mingling of funds allowed.
- Provide Letters of Guardianship to the SSA to apply and/or receive your ward's Social Security benefits.
- Establish guardianship bank account in the name of the ward. All guardian(s) name(s) must be listed on the account as legal guardian. This may not be a joint account with the ward.
- Keep all receipts and financial statements (accounts for bank, credit union, investment, funeral trusts, etc) for seven (7) years.
- Never let the ward have access to any financial accounts.
- Establish a ledger sheet to record all income and expenses made on behalf of the ward. Ledger sheets should be clearly written with a font size at least 12 pt.
- Establish a ledger sheet to record the ward's personal allowance expenditures. Ledger sheets should be clearly written with a font size of at least 12 pt.
- If the ward is in a substitute living arrangement the guardian must receive the income and expense ledgers from the provider, including all receipts.
- Complete a Guardianship or Conservatorship Inventory (GN-3440) of the ward's assets and sources of income as of the date you were appointed guardian or as of the date appointed Temporary Guardian, if applicable. This is provided by the Register In Probate shortly after the hearing.
- Submit Inventory to the Register in Probate within 60 days of the final court hearing. It is required that the statutory fee accompany the filing of the Inventory.

- If possible, complete a credit check on the ward to determine outstanding debt. [www.annualcreditreport.com](http://www.annualcreditreport.com) or another on-line source. Check CCAP (Consolidated Court Automation Program) for outstanding financial judgements.
- Ensure all bills are paid promptly and arrange payment plans for any outstanding debts.
- Apply for any appropriate public assistance programs (i.e. Social Security, Medicaid, long-term care services, rental assistance, Food Share, Weatherization, Homestead Credit, etc.).
- Establish irrevocable funeral trust (policy) if funds are available and appropriate, not to exceed \$12,000 without court approval.
- For recipients of Medicaid, ensure the ward remains under the appropriate asset level.
- Ensure the mandatory annual recertification process for Medicaid benefits is completed.
- Notify Economic Support and/or Managed Care Organization of any changes in income.
- If your ward receives an inheritance or back payment from Social Security please consult with the appropriate entity (Economic Support or benefit specialist).
- Any purchase/spend down must be for the benefit of the ward and comply with Court policy and statutory law. Any purchase for \$500 or more must have Court approval prior to the purchase.
  - ❖ This does not include rent, medical, dental, health care, medical equipment, eye care (glasses) or funeral trusts.
  - ❖ Examples which require Court approval include furniture, electronics, vehicles, and other luxury items.
- All recreational trips which include transportation and/or lodging over \$500, need Court approval, unless organized by an Agency. It is expected that food, souvenirs, and admission are to be directly paid from the ward's own funds.
- No gifting, donating, tithing, or payment to Estate Recovery Program of the ward's money without prior Court approval.
- The ward's money shall not be loaned to any other person.
- Never sell the ward's property (vehicles, real estate, stocks, etc.) without prior Court approval.
- Guardians are prohibited from dealing in cash transactions, except when providing the ward's allowance.
- Never divest or hide money in order to obtain/maintain eligibility for services.
- Never establish yourself as a beneficiary on any life insurance policies or funeral trusts after being appointed guardian.
- All wards residing with the Guardian or family members must complete and file the Monthly Budget Expense Form with verification to obtain Court approval. No payment for room and board should be made without approval.
- Guardians should maintain a clear ledger and records in the event of an untimely death.
- Complete statutory Annual Account form and file with Register In Probate on or before April 15 of each year. If Co-Guardians are appointed, both individuals must sign the Annual Account before a notary.

- All documents submitted to the Register In Probate Office can be no larger than 8 ½ x 11, per Wisconsin State Statute (801.145 (1): *Except for exhibits and wills, the size of all papers filed in court shall be no longer than 8 1/2 inches by 11 inches*).
- For record keeping and scanning purposes, the Register in Probate will not accept 2 sided documents. All documents must have one blank side.

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## GUARDIAN OF PERSON

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The **Guardian of Person** has the authority to make day-to-day decisions of a personal nature, except financial decisions, on behalf of the ward. These decisions would include arrangements for food, clothing, living arrangements, medical care, recreation and education. It includes consent for medical care and other treatment or service/training programs.

### **Responsibilities:**

- Choose medical providers based on ward's needs.
- Consent to medical treatment, which includes routine exams, treatment and health care based upon physician's recommendations.
- End of life decisions (i.e. removal of life support) require the guardian to obtain proper legal advice before directing health care providers on any "end of life" type of decisions, as some decisions may require Court approval.
- Consent to living arrangement and services, unless under Court ordered placement/services (protective placement/services).
- Make decisions related to travel.
- Ensure the ward does not have access to firearms.
- Complete statutory Annual Report form and file with Register In Probate on or before April 15 of each year. If Co-Guardians are appointed, both must sign the Annual Report.

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## FINAL DUTIES OF GUARDIAN

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### **Termination of a Guardianship**

Guardianships terminate and end upon the death of the ward. However, there may also come a time when the ward is no longer in need of a guardian due to the ward regaining his or her competence. Only a circuit court judge can terminate and end a guardianship while the ward is still living. When the judge orders the guardianship to be terminated while the ward is still living, the duties of the guardian end effective immediately, *except* for the following responsibilities:

- Complete and file statutory notarized final Account of Guardian (form GN-3500) with the Register In Probate Office within 30 days.
- In cases where the ward has regained competence, turn over all financial information, including money, to the former ward. A signed receipt by the ward is required to verify.
- You will not be legally discharged as Guardian of Estate until submission and approval of final Account of Guardian (form GN-3500).

**Successor Guardian appointed** (if you, as guardian, resign or if the court removes you as guardian in favor of a successor guardian)

- Upon notice of successor guardian appointment, **ALL** of your authority to act as guardian is terminated including spending money on behalf of the ward.
- Complete and file statutory notarized final Account of Guardian (form GN-3500) with the Register In Probate Office within 30 days.
- Provide a copy of the final account and copies of current financial records to the successor guardian.
- You will not be legally discharged as guardian until submission and approval of final Account of Guardian (form GN-3500).

### **Upon ward's death**

- Your legal authority to make decisions as guardian ends at the time of the ward's death.
- You are required to notify the next of kin of the ward's death.
- You are required to notify Social Security Administration, Register In Probate office, Department of Health and Human Services, the Managed Care Organization (if applicable) and all financial institutions of the ward's death.
- No final arrangements (i.e. funeral) shall be made by the guardian.
- No financial transactions may be made after the death of the ward (under the guardianship authority).

- Complete and file statutory notarized final account form with the Register In Probate Office within 30 days.
- You will not be legally discharged as guardian until submission and approval of final account (with respect to guardianship of estate)
- Please seek Probate assistance if assets remain.

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## HELPFUL TIPS

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- Always respond to any court notices in a timely manner.
- Never delegate your guardianship duties to another person/agency.
  - ❖ Never pre-sign checks to be used for the ward.
  - ❖ Do not allow another person or agency to manage the ward's income.
  - ❖ Do not allow a third party to draw out funds from the account.
  - ❖ Never allow the ward to establish accounts (bank, credit cards, utilities, etc.) in their own name. All accounts must include the guardian's name.
- Always monitor the residential/nursing home ledgers you receive on a monthly basis, ensuring the ward's needs are met and monthly allowance is accounted for appropriately.
- Always pay the ward's bills on a timely basis.
- Always communicate with appropriate parties when available funds fail to meet monthly bills.
- Always negotiate with banks to eliminate monthly service fees. Avoid being charged additional fees, such as NSF (Non-Sufficient Funds) or overdraft fees.
- Always complete annual eligibility requirements for benefits (Social Security, Medicaid, etc.).
- Always obtain court approval for all large ticket item purchases over \$500 and WAIT for Court response before purchasing.
- Always notify appropriate agencies when your ward has received a large amount of money placing them over the asset limit (SSA back payment, inheritance, settlements, etc.).
- Specific court approval is required to establish any WISPACT or ABLE Account with the Ward's assets.
- When completing the annual paperwork (Annual Account and Annual Report):
  - ❖ Sign the Annual Account before a notary. (Co-Guardians must both sign)
  - ❖ Sign the Annual Report on Condition of Ward. (Co-Guardians must both sign)
  - ❖ Always include interest payments on page 2 of the Annual Account.
  - ❖ Always itemize residential/nursing home expenses on page 2 of the Annual Account.

- ❖ Copies of financial statements (for accounting period) for all assets listed on hand on page 3 (bank statements, investment accounts, stocks, WISPACT, Able accounts, residential/nursing home ledgers, burial trusts, etc.) must be included.
  - ❖ Burial trust for annual accounting information includes cemetery plots, headstones, opening and closing of grave site costs, and/or irrevocable funeral trust.
  - ❖ For vehicles a copy of the Kelley Blue Book value printout must be included.
  - ❖ For real estate a copy of the most current tax bill must be included.
- Always be available to represent the interests of your ward within a reasonable time frame.
  - Always attend court hearings on behalf of your ward.
  - Always participate in initial/review care plan meetings on behalf of your ward.
  - Always ensure the basic rights of your ward are upheld.
  - Never limit the ward's contact with friends or family without cause and Court approval.
  - Your ward may not obtain a marriage license if the Court has removed that right.
  - Never consent to experimental treatments, organ donations or involuntary psychotropic medications without Court approval.
  - Guardians who request mileage reimbursement must first obtain Court approval prior to receiving any compensation from the ward. Per the Internal Revenue Service code IR-2016-169, the charitable standard mileage rate will be 14 cents per mile driven.
  - Guardians who request reimbursement for their time when acting on behalf of the ward, must petition the Court for approval prior to receiving any compensation from the ward.

**PLEASE NOTE THE FOLLOWING:**

- ❖ Guardians may petition for mileage or their time; guardians are not permitted to seek compensation for both.
- ❖ If the guardian requests any court-related fees incurred by the ward to be reduced or waived, the previously Court-approved compensation paid to the guardian will be rescinded immediately.
- ❖ If there are co-guardians appointed, only one request for fees is permitted.

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## RESOURCES FOR GUARDIANS

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- **Forms:** [www.wicourts.gov](http://www.wicourts.gov)
- **Outagamie County Guardian Assistance Program**  
2331 E. Lourdes Drive  
Appleton, WI 54915  
920 572-6313  
Email: [OutagamieGuardian@gmail.com](mailto:OutagamieGuardian@gmail.com)
- **Register in Probate**  
302 S. Walnut Street  
Appleton, WI 54911  
920 832-5601
- **Outagamie County DHHS -Aging and Disability Resource Center**  
320 S. Walnut Street  
Appleton, WI 54911  
920 832-5178
- **GWAAR (Greater Wisconsin Agency on Aging Resources, Inc)**  
[www.gwaar.org](http://www.gwaar.org)  
608 243-5670  
Email: [info@gwaar.org](mailto:info@gwaar.org)
- **Wisconsin Guardianship Support Center**  
[www.gwaar.org](http://www.gwaar.org)  
855 409-9410  
email: [guardian@gwaar.org](mailto:guardian@gwaar.org)
- **Wisconsin Department of Health Service (DHS) Client Rights' Office**  
[www.dhs.wisconsin.gov/clientrights](http://www.dhs.wisconsin.gov/clientrights)  
608 266-9369
- **Disability Rights of Wisconsin**  
[www.disabilityrightswi.org](http://www.disabilityrightswi.org)  
800 928-8778
- **Wisconsin Board on Aging and Long Term Care-Ombudsman Program**  
<http://longtermcare.wi.gov>  
800 815-0015  
email: [BOALTC@Wisconsin.Gov](mailto:BOALTC@Wisconsin.Gov)
- **DHS Division of Quality Assurance**  
[www.dhs.wisconsin.gov/dqa](http://www.dhs.wisconsin.gov/dqa)  
608 266-8481
- **Wisconsin Guardianship Association**  
[www.wisconsin-guardianship-association.com](http://www.wisconsin-guardianship-association.com)