



January 2003

Waiver Wise

Technical Assistance for the Community Options Program Waiver COP-W

Wisconsin Department of Health & Family Services • Division of Supportive Living
Bureau of Aging & Long Term Care Resources

Volume 03 Issue 01

Recruiting Quality Guardians

One important responsibility of county long-term support programs is assuring that participants who have been found incompetent to handle their financial or personal affairs are provided with capable and knowledgeable guardians. Because family and/or friends are not always available to act in this capacity, a county may need to seek a volunteer to become a guardian. It is often difficult to identify and recruit people to take on this important responsibility. This technical assistance document provides basic background on guardianship and suggests approaches for recruiting quality guardians. For more information on guardianship, see Chapter 880 of the Wisconsin Statutes.

Types of guardians

There are a number of types of guardians, including: guardian of estate, guardian of person, full guardian, temporary guardian, guardian ad litem, standby guardian, limited guardianship, and spendthrift guardianship. The most common are guardians of person and guardians of estate. If someone is found to be incompetent to handle his or her financial and business affairs, a **guardian of estate** is appointed. A guardian of estate is responsible for handling the person's business and financial affairs, but does not make decisions about a person's living arrangement, medical care, etc.

If a person is found to be incompetent to understand and make decisions regarding his or her personal needs, such as seeking medical care or providing food, clothing, and shelter, a guardian of person is appointed. A **guardian of person** is responsible for making personal, medical, and health care decisions for the participant, including being involved in making decisions about medical issues such as surgery or life-sustaining treatment.

Often, the same person will be appointed as guardian of both person and estate. This is called **full guardianship**. All guardians have the responsibility to advocate on behalf of the person under guardianship and to ensure the person's rights are respected and maintained.

When are guardians needed?

People can make their own decisions as long as they are legally competent, even if some of those choices are not considered by others to be wise decisions. However, when someone is no longer competent, a guardian may be needed. People may become incompetent and need a guardian as a result of dementia, strokes, traumatic brain injury, or due to a developmental disability such as mental retardation.

When people experience significant cognitive decline or have impaired judgment, memory, and decision-making ability, and are clearly not capable of making decisions for themselves independently in a safe manner, guardianship may need to be pursued. Incompetence means that a court has determined that a person does not have, or has lost, the cognitive ability needed to effectively handle his or her own personal or financial affairs. For more information on the legal definition of incompetence, see Chapter 880.01 (4) of the Wisconsin Statutes.

The most useful way to determine whether a person needs a guardian, and for what purpose, is to consider the person's need for support and protection in functional areas, such as medical decisions, personal needs, safety, relationships, etc. Knowledge of the person's day to day skills and of the practical issue he or she is likely to face is at least as important as diagnoses. Ideally, information from formal medical or psychological testing should be combined with information gathered from people who know and assist the person in his or her typical environments.

Once information is gathered, a petition is filed and a court hearing is held. A judge will examine all the evidence, including the written statement by a physician or psychologist concerning the person's mental condition based upon his/her examination. If there is clear and convincing evidence that the person is incompetent, the court will appoint a guardian of the person, of the estate, or both.

Things to consider in choosing a guardian

Ideally, guardians are found within a person's family. Involved and supportive family members often make good guardians, as they know the participant better than anyone and usually have the person's best interest as their top priority. They also make good advocates. For additional information, see Chapter 880.33 (5) of the Wisconsin Statutes.

However, there are instances where people have no family members or have family members who are unwilling, unable, or not appropriate to serve as guardians due to health, distance, lack of involvement, history of family discord, or other factors. In these instances, it is necessary to look beyond family to find someone to serve as the person's guardian. One option is to consider close friends, neighbors, church members, or other community people who are already involved with the person and would be willing to serve as guardian.

Sometimes, however, it is not possible to find a guardian within a person's network of family and friends. In these instances, it will be necessary to locate someone outside the person's informal support network to serve as guardian.

Ideas for recruiting quality guardians

Finding people who are willing to serve as volunteer guardians can be a challenge for counties. A multi-faceted program of recruitment may be the most effective approach. A recruitment program could include the following components:

- Traditional ideas include the use of posters, brochures, and advertisements to inform the community. Local radio stations may run public service announcements or have volunteer guardianship as a topic on a talk show. A local newspaper may be willing to interview county staff regarding the need for volunteer guardians.
- Targeted recruitment and mailings directed to retired professionals such as teachers, clergy, social workers, care managers, physicians, or other people with a history of civic involvement may help find people who would appreciate the opportunity to remain involved in serving their community by becoming volunteer guardians.
- Word of mouth. Utilize current guardians to help recruit new guardians. Current guardians may know other people that would make good guardians and could discuss the idea with them directly. Some current guardians may be willing to share testimonials either through public speaking or human-interest stories in the local newspaper. Keeping in mind that the confidentiality of the person under guardianship must be protected, guardians may still be able to share how being a volunteer guardian has enriched their own lives.
- Contacting churches, synagogues and civic organizations within the county. Sending out flyers or mailings, including brochures in church bulletins or newsletters, and discussing guardianship as a guest speaker may help locate additional guardians.
- Keeping an updated volunteer guardianship list with all current guardians, inactive guardians, and prospective guardians. Conducting a brief survey to determine their interest level may be helpful. Some current volunteer guardians may be willing to become the guardian for another person. Some inactive or prospective guardians, who did not feel able to serve as a volunteer guardian at some point in the past, may now be ready to take on that responsibility for someone.
- Offer an annual “Guardianship Educational Fair” to promote and inform people in the community about guardianships. This might reach people in the community who are concerned about their own family members and help them prepare for caring for their loved ones, including possibly becoming a guardian for a family member if needed at a later time. It also may prompt a casually interested person to take the next step to becoming a volunteer guardian.
- Develop a tool or chart that clearly outlines and defines the duties and responsibilities of a guardian. An easy to read summary of the duties and responsibilities may help answer questions of prospective guardians and help them understand that the duties and responsibilities are manageable.
- Focus on matching. For example, a prospective guardian may feel comfortable working with people with mental retardation but not people with dementia, or vice versa. Other people may only want to work with people living within the same

geographic location as they live. Someone may be willing to be a guardian of person, but not want to handle money issues. Another person may feel comfortable handling the business affairs for someone else, but does not want to make decisions regarding health care issues, so would only want to be guardian of estate. Taking the time to learn these preferences may result in being able to recruit someone to be a volunteer guardian in certain situations, rather than the person declining to become a volunteer guardian altogether.

- Another option to consider is the **corporate guardian**. Wisconsin law allows nonprofit agencies or corporations to provide guardianship services and to charge a fee for these services. Often, larger nonprofit human service organizations offer guardianship services in addition to the wider array of social services they provide. Corporate guardians must fulfill the same requirements and responsibilities as volunteer guardians. In some instances, corporate guardianship may be the best alternative for persons with no family or other connections to the community. For persons on the waiver, payment for services by a corporate guardian is allowable under SPC code 406.

Training and Support ideas for guardians

There are a number of rules and regulations a guardian must follow. It is important for guardians to have a full understanding of their duties and responsibilities. Counties can help guardians by providing training and support. Effective training ideas could include the following:

- Providing written information to guardians regarding their duties and responsibilities can be a valuable resource for them. Many counties have developed guardianship manuals that are given to each guardian. Informing guardians of resources they can call when they have questions can be important as well.
- There are videos available for guardians regarding their roles and responsibilities. Some counties have developed a video lending library for prospective and current guardians.
- Guardianship orientation either individually or in small groups can be effective. Some counties have current guardians speak at a group orientation.
- A guardianship support group or mentoring system where new guardians are paired with an experienced guardian for training and support over the first few months may be helpful.
- Counties may want to provide networking opportunities for guardians by providing annual training and a time to have questions answered. Topics could include tips on completing the annual paperwork required by the courts or how best to monitor the quality of care someone is receiving in substitute care. Certificates, signed by the judge, may also be provided to acknowledge their contribution and to thank them for their work.

Other Things to Consider in Recruiting Quality Guardians

In addition to fulfilling the legal duties and responsibilities of a guardian, an effective guardian would also be committed to the following:

- **Advocacy.** A guardian should always act as an advocate for the person and work to exercise the person's rights.
- **Monitoring the care** for those persons living in substitute care, to ensure the person receives quality care. Work to resolve problems as they arise, in a way that protects the person's interests.
- **Spending enough time** with the person through personal visits to learn the person's preferences and needs. This is important in determining the best possible way to meet those needs, while respecting individual preferences whenever possible.

It is important for a guardian to be able to make difficult decisions on behalf of another person. There are times when a guardian will be involved in making health care decisions regarding starting or stopping life-sustaining treatments or determining that a person needs to move to a substitute care setting. An effective guardian of person will be able to feel comfortable making decisions regarding health care and living arrangements. In addition, counties should offer support and education to guardians as they take on these difficult decisions.

A prospective guardian may be concerned about liability issues. In general, when guardians pursue the person's best interest and practice common sense and good judgement, liability is not a problem. However, a guardian is liable for any misuse or misappropriation of funds, or for any harm the person suffers through gross or extreme negligence on the guardian's part. Guardians who are concerned about liability may seek legal advice at their own expense.

Alternatives to Guardianship

Promoting alternatives to guardianship may be helpful in lessening the frequency where guardians are needed. People should be encouraged to make decisions prior to a decline in health that may interfere with their cognitive ability. They may wish to complete documents that appoint someone to handle their financial affairs, or to make health care decisions for them if they become incapable of making their own health care decisions.

A **durable power of attorney for health care** document appoints someone to be a health care agent. The agent would have the authority to make health care decisions when the person is no longer capable to making health care decisions on his or her own. A person can record his or her wishes regarding certain health care issues such as CPR, tube feedings, or ventilators. Having this document completed in advance can help prevent the need for a guardianship of person to be appointed. Another positive aspect is that people are able to select whom they wish to make health care decisions for them.

A **power of attorney** is a document appointing someone to manage a person's financial affairs. Because a power of attorney document does grant broad financial powers to someone else to manage the person's money and property, it is very important to choose that person carefully. It is important to select someone the consumer can be confident will handle their money appropriately and in their own best interest. Some people complete a durable power of attorney, which remains in effect even if a person later becomes incapacitated.

A **conservatorship** is similar to guardianship of estate except that it is voluntarily entered into, the person is not declared incompetent, and he/she can nominate the prospective conservator.

Another venue for handling a person's money is the **Representative Payee** (Rep Payee). It is important to remember that this option is only available for persons receiving Social Security, SSI, Veterans Administration (VA) benefits, and Railroad Retirement monies. Persons who may benefit from this option are those who have issues with managing their money properly. There are minimum accounting requirements and few safeguards, although the Social Security Administration can require an accounting from the Representative Payee.

Acknowledgement goes to the various counties and agencies for providing information for this document including the following: Waushara County Guardianship Manual, Wisconsin Coalition for Advocacy, Kindcare, Inc., Judge Gary L. Carlson of Taylor County Circuit Court and his article "Guardians, Guardianships, and Protective Placements: A Guide for the Practical Guardian," and the Coalition of Wisconsin Aging Groups Elder Law Center.

Additional Resources:

- Guardianship of Adults: A Decision-Making Guide for Family Members, Friends and Advocates, Department of Health and Family Services, 2000
- Wisconsin Guardianship Support Center Newsletter