



*The Guardian* is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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## Advance Planning for LGBT Elders

On June 6, 2014, Federal District Court Judge Barbara B. Crabbe ruled that Wisconsin's ban on same-sex marriage was unconstitutional and a violation of same-sex couples' equal protection rights. Since that ruling, county clerks across Wisconsin have issued marriage licenses to many same-sex couples and hundreds have gotten married. State Attorney General J. B. Van Hollen has filed an emergency request to stay the ruling and has hinted that an appeal of the ruling is likely to be filed.

This GSC article was written before Judge Crabbe's ruling. The effect of this ruling as well as the effect of any subsequent litigation is unknown at this time. If an individual has specific estate planning concerns, consultation with an attorney practicing in this area of law is recommended.

The decision to complete advance planning should be thoroughly considered by every adult. The consequences of not doing so are significant as they may result in a guardianship, the wrong person being chosen as guardian, specific end-of-life wishes not being followed or incorrectly carried out, or other actions being taken that the person would not have wanted.

In February, four same-sex couples filed a lawsuit in federal district court challenging Wisconsin's constitutional ban on same-sex marriage. *Wolf & Schumacher v. Walker et al*, 14 CV-64 (W.D. Wis. 2014). In addition to that challenge, the plaintiffs oppose a Wisconsin law that makes it a crime for same-sex couples who are prohibited from marriage in Wisconsin to marry elsewhere. See Wis. Stat. § 765.30(1)(a). Those who are found guilty of violating this statute face a fine up to \$10,000, a sentence of up to 9 months of jail, or both. *Id.*

On its face, *Wolf & Schumacher* may not seem relevant to the subject of advance planning. However, both those who brought forth this action as well as many other same-sex couples in Wisconsin have had to engage in significant advance planning to improve their partner's ability to participate in making health care and financial decisions should the individual

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not be able to make his or her own decisions. Even then, engaging in advance planning does not always equate to securing the partner's participation and/or guaranteeing the individual's wishes will be followed.

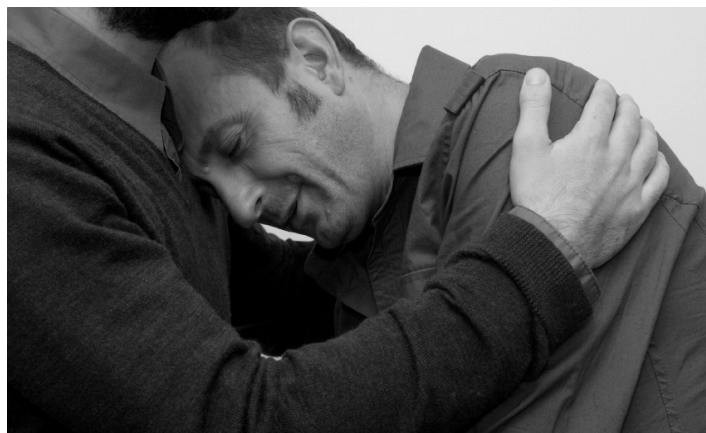
Two of the four couples in the *Wolf & Schumacher* faced significant issues even though they had done some advance planning. One situation involved a health care power of attorney (HCPOA) agent who was the agent for his partner. The partner was placed in a medically-induced coma. Despite having an activated and valid HCPOA, the partner's father did not recognize the HCPOA for his own personal reasons. The father sought legal assistance to try to revoke the HCPOA. He also sought to terminate his son's life. The father was not successful with either and his son woke from his coma only 28 days later.

Another couple, traveling out-of-state without copies of their powers of attorney (POAs) encountered problems when one fell ill and needed emergency medical care. A relative of the partner who was ill was called on by the medical staff to make health care decisions and not her partner – the chosen agent – who was already at the hospital and available. *Id.*

These two couples' experiences are not isolated or anecdotal. Therefore, for many in the LGBT community, it is especially important to consider advance planning. To be afforded the protections available through Wisconsin's advance planning laws, an individual must learn about both their protections and their limitations. The following is a summary of selected advance planning laws as well as related issues. Laws involving same-sex couples and marriage are evolving quickly. Consultation with an attorney is recommended.

**Powers of Attorney:** For many same-sex couples, executing a POA is the most complete and efficient way to legally memorialize one's wishes, ensure partner participation, protect access to each other's property and assets, and provide a multitude of additional legal protections. The execution of a POA allows the principal to create a legal, written expression of his or her wishes and to select an agent to act on his or her behalf.

For both a POA for Health Care and a POA for Finances, the selection of the agent is solely left to the principal's discretion. While the selected agent has the right to refuse to act as the agent, the principal may choose, without any significant legal



prohibition or subsequent court review, who he or she wants to act as the agent. See Wis. Stat. § 155.01(4) and § 244.02(1).

Having a POA provides protections in addition to those contained within Wis. Stat. Ch. 155 and 244. For example, as stated below, a power of attorney agent is required to receive notice of any guardianship proceeding. Wis. Stat. § 54.38(2)(b)(5).

Powers of attorney forms are available through the Wisconsin Department of Health Services and the Wisconsin Guardianship Support Center websites. They may also be drafted by an attorney.

#### **Declaration to Physicians (a.k.a. Living Will):**

If there are particular concerns about end-of-life matters, the revocation of a POA, or high-conflict guardianship proceedings, the individual may also wish to execute a Declaration to Physicians (a.k.a. a Living Will). A living will is a directive to the individual's doctor and does not designate an agent. It solely discusses the withholding or withdrawal of certain life-sustaining treatment for individuals who have a terminal condition or individuals in a persistent vegetative state. Should both a living will and a Power of Attorney for Health Care be executed, the applicable provisions should reflect each other to avoid confusion and/or conflict.

**Guardianships:** Unlike the admissions allowed under Wis. Stat. Ch. 50 discussed below, adult guardianships under Wis. Stat. Ch. 54 have no rules about the priority of who may be selected as the guardian. Rules of preference exist in specific situations which include if (1) the proposed ward is an indi-

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vidual with a developmental disability or with a serious and persistent mental illness and the proposed guardian is a parent (or identified within a testamentary nomination by a parent), or (2) the proposed guardian is an agent under a power of attorney. A nomination by the proposed ward stated within his or her POA will also be considered by the court. See Wis. Stat. § 54.15. Informally, the court may prefer to appoint a relative or a friend as the guardian and will consider a ward's and his or her family's opinions about the appointment, but a proposed guardian will not be appointed if the appointment is not in the ward's best interest. *Id.*

The class of those who may be determined an appropriate guardian is broad, but those who may receive notice of the guardianship is more limited. See Wis. Stat. §54.38 and § 54.01(17). Per Wis. Stat. § 54.38, those who are required to receive notice include the proposed ward's presumptive heirs, an agent under a power of attorney, and other interested persons.

A registered domestic partner is a presumptive heir under Wis. Stat. § 852.01. However, an unregistered domestic partner, one who resides with the proposed ward, or one in a romantic relationship with the proposed ward are not presumptive heirs under the rules of intestate succession and might not receive any notice of the guardianship. *Id.* (See the below "Wills" section for more information.)

The phrase *interested person* is defined by Wis. Stat. § 54.01(17). Wis. Stat. § 54.01(17)(a)3 only specifies that an interested person may be an heir. As stated above, a registered domestic partner is a presumptive heir. However, this statute does not clearly define a registered domestic partner as an interested person (although a spouse is defined as an interested person under this statute).

The court may determine that "any other person" is required to receive notice. See Wis Stat. § 54.38(2)(b)(9). Those in this class may be fact- and case-specific, and this may be determined by the court first before any notice is given. Realistically, if one was not aware of the potential for a guardianship action, a guardianship could be pursued, if not a judgment entered, before the issue of who would be an appropriate "other person" could even be raised by someone who had not received prior notice.

As stated above, agents should also be aware of how they may be lawfully served guardianship pleadings. For agents, lawful "notice" may be accomplished by personal service or by mail. Wis. Stat. § 54.38(2)(b). Mailed service may be performed by using regular mail service. Some practitioners may choose to send the pleadings by certified or registered mail in potentially high-conflict guardianships to prove that service was performed, but not all do this and they are not required to by law. Also, the petitioner may be filing without the assistance of an attorney and he or she may be unfamiliar with the notice requirements and his or her responsibilities to follow them. Paying close attention to one's mail is important, especially if a guardianship will be considered.

#### **Hospital and Long-Term Care Visitation Authorization:**

Regardless of any type of advance planning performed, those who are concerned that their partners will not be allowed to visit them if they are hospitalized should discuss who may visit with their medical providers. Some hospitals have a specific form called "Hospital Visitation Authorization" that may be completed ahead of time and would allow a person to designate who may be allowed to visit him or her should hospitalization occur.

Individuals should note the rights they have as patients. Within those rights is the right to have visitors of one's own choosing. This specifically includes same-sex spouses and domestic partners. Wis. DHS Admin. Code. § 124.05(3)(a)(1)(p) (hospital patients' rights). See also CMS, "Reminder: Access and Visitation Rights in Long Term Care (LTC) Facilities," S&C: 13:42-NH (June 23, 2013), found at: [www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-13-42.html](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-13-42.html) (last visited March 10, 2014).

**Wills:** Unless an individual has executed a valid will declaring his or her wishes for the disposition of his or her estate, the individual's estate will be disposed of according to the rules of intestate succession. See Wis. Stat. § 852.01. Spouses or registered domestic partner are first in the order of priority for who will inherit through intestate succession. *Id.* There are no exceptions or rules regarding unregistered domestic partners or those who resided with the decedent.

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#### **Other Relevant Laws:**

**Nursing Home/CBRF Admission.** Per Wis. Stat. § 50.06, an individual who is incapacitated may be admitted into a nursing home or a community based residential facility (CBRF), without a valid POA, upon the consent of another individual, without an adjudication of incompetency, if petitions for guardianship and protective placement are filed before the admission. This consent can be given by a spouse or a registered domestic partner. If no spouse or registered domestic partner provides the consent, then those who may consent, in descending order of priority, include the adult child, parent, adult sibling, grandparent, adult grandchild, or a “close friend” of the individual. Who is considered to be a “close friend” or what this phrase means is not defined by the statute. While the individual who can provide the actual consent is ordered, this type of consent may not be given if a person who resides with the individual disagrees with the admission. See Wis. Stat. § 50.06(2). Nowhere within the order of priority is the language “registered domestic partner” or a similar term used.

**Hospice Admission.** Per Wis. Stat. § 50.94, an individual who is incapacitated may be admitted into hospice care without a valid POA or adjudication of incompetency if another gives consent to the admission and the individual has a terminal condition likely to result in death in 6 months. Those who may consent to the admission, in order of priority, include the spouse or registered domestic partner, adult child, parent, adult sibling, or a close friend or relative who (a) is at least 18, (b) has maintained sufficient regular contact with the individual to be familiar with his or her personal beliefs and activities, (c) has exhibited special care and concern for the individual. Wis. Stat. § 50.94(3)

**Note:** For both admissions types under Wis. Stat. Ch. 50, the individual retains the right to object the admission.

**Authorization for Final Disposition.** If a person has specific wishes about how he or she would like to be buried, then an authorization for final disposition should be executed. Unless an authorization for final disposition is executed, a registered domestic partner or other partner has no significant priority given by Wis. Stat. § 154.30(2) to make decisions

about the location, manner, or conditions of a partner’s final disposition or burial. If no spouse, child, parent, sibling, other relative, or guardian is available under Wis. Stat. § 154.30(2)(a)1-7, than “any individual...who is willing to control the final disposition and who attests in writing that he or she has made a good-faith effort” to find any of the individuals first mentioned in subsections 1-7 may then make decisions about another’s final disposition. Wis. Stat. § 154.30(2)(a)8.

Well-drafted advance planning can protect the individual’s rights when the person is unable to make his or her decisions. When one’s role is unclear and is still being defined within the law, as in the case of same-sex couples and marriage, advance planning can also help clarify the applicable roles and provide some security.

#### **At-a-Glance: Aging as LGBT**

It is believed that at least 1.5 million people who identify as lesbian, gay, bisexual, or transgendered (LGBT) and who are 65 or older live in the U.S. This number is expected to double by 2030. See SAGE. “General Facts.” [www.sageusa.org/issues/general.cfm](http://www.sageusa.org/issues/general.cfm) (last visited March 3, 2014).

Individuals who identify as LGBT and are elders confront several significant issues, including:

**Social isolation:** LGBT elders are “twice as likely to live alone, twice as likely to be single, and 3-4 times less likely to have children – and many are estranged from their biological families.” See SAGE. “General Facts.” [www.sageusa.org/issues/general.cfm](http://www.sageusa.org/issues/general.cfm) (last visited March 3, 2014). In addition, members of one’s family of choice may not be recognized as having the same or similar legal significance as a legal relative.

**Similar or same legal protections, especially those related to marriage, are not afforded to same-sex couples in Wisconsin.** Because same-sex partners cannot marry, laws that benefit married couples, including those related to income taxes and social security, do not benefit same-sex couples.

**Institutional distrust and discrimination.** Those individuals who are 65 and older have witnessed many events that would

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# Helpline Highlights



The Wisconsin Guardianship Support Center receives many calls and emails about guardianships, powers of attorney, other advance directives, and more. Each quarter, the GSC shares some of the calls and emails here. All personal and identifying information has been removed to protect the privacy of the individuals involved.

## **The guardian is traveling and is temporarily unavailable. May a ward voluntarily check herself into a mental health unit or facility if the guardian is not available?**

No. Both the guardian and the ward must consent. See Wis. Stat. § 51.10 (8) (“An adult for whom, because of incompetency, a guardian of the person has been appointed... may be voluntarily admitted to an inpatient treatment facility if the guardian consents after the requirements of sub. (4m) (a) 1. are satisfied or if the guardian and the ward consent to the admission under this section.”) A civil commitment could be initiated if a person meets the dangerousness standard under Wis. Stat. Ch. 51 if the guardian is unavailable for a significant period of time.

## **The guardian of a ward with development disabilities called with this question: The ward was recently examined to see if she was pregnant. While she was not, pregnancy remains a concern of the guardian. Can a guardian consent to the sterilization of the ward?**

Sterilization is a significant and permanent medical act. Many courts across the country have encountered similar questions. As a result, there is both defined statutory law and case law on this issue. Wis. Stat. § 54.25(2)(c)1e refers specifically to the ward’s right (and ability to) to consent to sterilization. If a ward is declared incompetent by the court to exercise the right to consent to sterilization, then the right is removed from the ward and no one else, including the guardian, may provide consent to the sterilization. Wis. Stat. § 54.25(2)(c)3. A court may determine that ward is able to exercise the authority. Then the right is the ward’s right to exercise; the guardian may not exercise this right and provide the consent on the ward’s behalf. The court may also choose to limit the ward’s exercise of this right by requiring the ward to consult with guardian prior to the sterilization. *Id.*

*Note:* Consent to sterilization is separate from the

guardian’s ability to consent to other medical treatment and should not be confused with the guardian’s ability to consent to different medical procedures under Wis. Stat. § 54.25(2)(d)2 ab & ac.

## **The principal has an activated HCPOA but has regained capacity since activation. He was not happy with his agent’s performance of her duties. He would like to revoke the HCPOA and select another to act as his agent. What steps can he take to ensure this transfer of authority is lawful and to reduce potential conflict in the future?**

Technically, any adult who is sound of mind may execute a HCPOA. See Wis. Stat. § 155.05(1). This is true even if there is a prior activated, unrevoked HCPOA. A person may recover and regain his or her capacity to make health care decision. The primary issue is whether the individual is “sound of mind” and has the requisite capacity to execute a new HCPOA. This can be more difficult to ascertain if there is a previous statement of incapacity looming in the background, especially if the previous statement is creating doubts about the individual’s current capacity. Specifically, the previous statement of incapacity might cause some to question whether the person is able execute a legal HCPOA now.

To prevent confusion and situations like this, the recommended method is to have the first HCPOA deactivated, then revoke the HCPOA, and execute a new HCPOA. There is no statutorily defined procedure for deactivating a HCPOA. One method is to follow the inverse procedure used when activating the HCPOA. For example, if two physicians signed a statement of incapacity after examining the principal to activate the HCPOA, then two physicians could examine the principal and sign a statement of capacity to deactivate the HCPOA. A copy of that statement should be placed in the principal’s medical records and given to the agent and other appropriate parties.

Once deactivated, the principal can either revoke and then execute a new HCPOA or simply execute a new HCPOA naming the new agent. The execution of a new HCPOA revokes a previously executed HCPOA. Wis. Stat. § 155.40(1)(d). The principal may still wish to revoke using the other methods allowed by statute, including through a

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On April 21, 2014, Governor Walker announced the **expansion of Family Care** to Brown, Door, Kewaunee, Marinette, Menominee, Oconto and Shawano counties.

The American Bar Association has released its **updated Health Decisions Resources page**. If interested, it may [www.americanbar.org/groups/law\\_aging/resources/health\\_care\\_decision\\_making.html](http://www.americanbar.org/groups/law_aging/resources/health_care_decision_making.html).

#### Legislative Update:

**The Adult-at-Risk/Vulnerable Adult Alert Bill** (known as Wisconsin Assembly Bill 710 or now as 2013 WI Act 264) discussed in the first quarter's newsletter has passed and is now law. It allows law enforcement agencies to use an integrated alert network to disseminate reports of missing adults at risk.

**Wisconsin Assembly Bill 360** (now 2013 WI Act 158) is also now law. This act includes provisions relating to emergency detention (ED) and the involuntary commitment for treatment of persons who are mentally ill, developmentally disabled or drug dependent. It requires a determination to be made that the ED is the least restrictive alternative appropriate. Law enforcement may then take the person into custody. A person is in custody when he or she is under the physical control of the law enforcement officer. The seventy-two hour time frame before the probable cause hearing begins when the person is taken into custody. The person must also be informed of his or her rights when the person arrives at the facility. County approval of the ED may only be provided when there is a reasonable belief that the individual will not consent to evaluation and diagnosis, and the treatment is necessary to stabilize and remove the probability of harm.

**Wisconsin Assembly Bill 488** (now 2013 WI Act 340) is also new law. Act 340 allows corporation counsel to make a limited appearance when a three-person petition may not be appropriate for the individual involved. If done, corporation counsel must inform the person seeking the petition that he or she may discontinue seeking the petition or request that corporation counsel makes a limited appearance. Corporation counsel is required to provide notice

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## Upcoming events

**June 15, 2014:** World Elder Abuse Awareness Day

**June 24-25, 2014:** Wisconsin Healthy Aging Summit  
Holiday Inn Convention Center, Stevens Point, WI  
Sponsored by: Wisconsin Institute for Healthy Aging and Community-Academic Aging Research Network  
Register:  
[www.uwsp.edu/conted/confWrkShp/Pages/HealthyAgingSummit.aspx](http://www.uwsp.edu/conted/confWrkShp/Pages/HealthyAgingSummit.aspx)

**September 10-12, 2014:**

Think Big! 2014 Aging Network Conference  
Kalahari Convention Center & Resort, Wisconsin Dells  
Sponsored by: Greater Wisconsin Agency on Aging Resources (GWAAR)  
Contact: (608)243-5670 or [info@gwaar.org](mailto:info@gwaar.org)

**September 12, 2014:**

Trusts & Benefit Access Training  
American Family's Training Center  
6000 American Parkway, Building A | Madison, WI  
Sponsored by: Wisconsin Guardianship Association (WGA)  
Intended audience: guardians, care managers, social workers, healthcare workers and others working in a human service related field  
For the registration form: Marit Waack at (715) 514-1825 or [office@thearceauclaire.com](mailto:office@thearceauclaire.com)  
To submit the completed registration: Jean DeBauche at (920) 499-4431 or [progrdinc@aol.com](mailto:progrdinc@aol.com)  
For more information: Marit Waack at (715) 514-1825 or [office@thearceauclaire.com](mailto:office@thearceauclaire.com) or Kay Schroeder at (920) 553-8780 or [corporateguardianskay@charter.net](mailto:corporateguardianskay@charter.net)

**September 19, 2014:**

Wisconsin State/Dane County Triad Crime Prevention and Safety Expo  
American Family's Training Center  
6000 American Parkway, Building A | Madison, WI  
Contact: To RSVP (608) 441-7897 or for more information visit [www.rsvpdane.org](http://www.rsvpdane.org) or [www.triadofwisconsin.org](http://www.triadofwisconsin.org)

If your organization or agency is hosting a statewide event related to commonly-discussed subjects in *The Guardian* and would like to spread the word, contact the GSC at [guardian@gwaar.org](mailto:guardian@gwaar.org).



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written statement revoking the HCPOA. See Wis. Stat. § 155.40(1)(a-c).

**An individual has no HCPOA and is currently in hospice. A guardianship is now needed and an examining physician's or psychologist's report must be completed as part of the guardianship. The individual last saw her doctor eight months ago. Travel to the clinic is difficult for individual. Can the doctor complete an examining physician's report based upon the eight-month old examination?**

No. The law requires the physician or psychologist to inform the proposed ward that his or her statements could be used as grounds to determine incompetency before examining the ward for guardianship purposes. See Wis. Stat. § 54.36 ("Prior to the examination on which the report is based, the guardian ad litem, physician, or psychologist shall inform the proposed ward that statements made by the proposed ward may be used as a basis for a finding of incompetency..."). The purpose of the last examination was not related to any pending (or even considered) guardianship, and the physician had not made any statements to the ward about a guardianship, including those stated within GN-3130: Examining Physician's or Psychologist's Report. Completing the report relying on an eight-month old examination would have been inappropriate.

The law does provide, "Nothing in this section prohibits the use of a report. . . based on an examination of the proposed ward. . . before filing the petition. . ." *Id.* While this allows an examination to be performed prior to filing the petition, this does not appear to allow any examination done to be used as a basis for the report.

## Disclaimer

This newsletter contains general legal information. It does not contain and is not meant to provide legal advice. Each situation is different and this newsletter may not address the legal issues affecting your situation.

If you have a specific legal question or want legal advice, you may want to speak with an attorney.

**May a guardian of the estate purchase real estate, such as a house, for a ward without court approval?**

A guardian of the estate must obtain court approval prior to purchasing the real property in the ward's name. Wis. Stat. § 786.12 provides a guardian of the estate may purchase property if the court first determines that the purchase would substantially further the ward's interests.

**I have been my ward's guardian for several decades and am starting to plan for when and how I should relinquish my role as guardian. I have many boxes of records relating to her life, her health, and litigation in which she was involved. I want to make sure that a new guardian is aware of my ward's personal history. Are there any guidelines available to assist with this?**

Wis. Stat. Ch. 54 provides little guidance on how long records should be kept by the guardian or how the records should be kept. While it discusses when certain records can be released, it does not clearly discuss how records should be maintained or transferred to a stand-by or successor guardian.

Only general guidance can be found through Wis. Stat. § 54.18. Wis. Stat. § 54.18(2) (a) requires a guardian to exercise the degree of care an ordinarily prudent would use in his or her affairs. Considering this, guardians are required to use some care when deciding how to maintain and transfer their records.

Corporate guardians should note that they are required to maintain certain records under Wis. DHS Admin. Code § 85.15, including:

1. 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.
2. A current photograph of the ward.
3. All relevant legal documents involving the ward.
4. Advance directives.
5. A list of key contacts.

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6. A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.
7. Documentation of all ward and collateral contacts, including the date, time, and activity.
8. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.
9. A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.
10. Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.
11. 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.
12. A personal and social history of the ward including a family history. *Id.*

While these rules apply to corporate guardians, non-corporate guardians may want to consider maintaining a file with this information in it as well.

Several other considerations to think about when organizing the ward's records in preparation for a transition to a new guardian are as follows:

1. Records should be organized in a manner that a third party may easily understand the organizational system. A guardian may not be able to choose when he or she resigns, and emergencies happen.
2. Consider what records would be helpful and what records would be necessary to a new guardian if and when the guardian assumes his or her role.
3. Other considerations:
  - a. Is the record known to exist and be available through a reliable source (like the Register in Probate) or would it be hard to discover the record's existence?

- b. Is there a significant cost if one needs to obtain a new copy or would it take a significant amount of time or money to obtain it?
  - c. Is the guardian the only known record keeper of that particular record?
  - d. Is there any potential for harm if the record is disposed of?
4. The creation of an index or listing of the ward's personal property as well as other property. An index of the ward's personal property (as well as other assets and property) can be helpful to clarify what is owned generally. An index can be helpful in certain other other situations, too. It can be helpful if the ward lives in a shared residence and any of the roommates leaves. It can also indicate what was owned for insurance purposes in the case of an emergency.

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*Points of Interest, continued from page 6*

about his or her role in the action. If the petition is still filed, corporation counsel may include a statement within the notice the person seeking the petition believes the facts constitute probable cause. The law also requires the court to review the petition within 24 hours of filing, not including weekends and legal holidays.

**Wisconsin Assembly Bills 428 and 575 and Wisconsin Senate Bill 127 failed.**





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have affected their view on institutions and government. It is important to remember that an LGBT elder may have witnessed or even experienced institutionalization in a mental health facility for being LGBT; criminal prosecutions solely on the basis of one's sexual orientation; the Stonewall Riots; the emergence of the HIV epidemic; "Don't Ask, Don't Tell" policy and its repeal; as well as the emergence of same-sex marriage laws and the U.S. Supreme Court striking down provisions of DOMA that allowed the federal government to withhold certain protections and benefits to same-sex couples. These events may lead some to be more fearful and less trusting. For a more developed historical review, go to SAGE, "Improving the Lives of LGBT Older Adults: Full Report." March 2010. [www.lgbtagingcenter.org/resources/resource.cfm?r=16](http://www.lgbtagingcenter.org/resources/resource.cfm?r=16) (last visited March 24, 2014).

Many LGBT elders feel uncomfortable disclosing their sexual orientation when they enter long-term care facilities – some do not divulge that information. One study found that 78% of LGBT elders would feel not comfortable disclosing their sexual orientation to staff at nursing homes, assisted living facilities, or other long-term care facilities. National Senior Citizens Law Center, "LGBT Older Adults in Long-Term Care Facilities, Stories from the Field." 15 April 2011. [www.nslc.org/index.php/tag/lgbt/](http://www.nslc.org/index.php/tag/lgbt/) (last visited March 3, 2014). See also SAGE, "Improving the Lives of LGBT Older Adults," March 2010. [www.sageusa.org/resources/publications.cfm?ID=21](http://www.sageusa.org/resources/publications.cfm?ID=21) (last visited March 11, 2014). See also National Gay and Lesbian Task Force, "No Golden Years at the End of the Rainbow," August 2013. [www.thetaskforce.org/downloads/reports/reports/no\\_golden\\_years.pdf](http://www.thetaskforce.org/downloads/reports/reports/no_golden_years.pdf) (last visited March 14, 2014).

In a study by Lambda Legal involving the LGBT community and health care, more than half of the respondents reported experiencing some form of discrimination in health care. Tillery, B., "When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination against LGBT People and People Living with HIV." Lambda Legal (2010): 5. [www.lambdalegal.org/publications/when-health-care-isnt-caring](http://www.lambdalegal.org/publications/when-health-care-isnt-caring) (last retrieved on March 24, 2014). Those who are LGBT elders reported experiencing greater discriminatory treatment than younger respondents. Tillery, B., "When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination against LGBT

People and People Living with HIV, LGBT Older Adults and Older Adults Living with HIV." – Lambda Legal (2010) insert. [www.lambdalegal.org/publications/when-health-care-isnt-caring](http://www.lambdalegal.org/publications/when-health-care-isnt-caring) (last retrieved on March 24, 2014).

**Lower economic resources available or economic disparities.** Several studies have shown poverty rates are higher within the LGBT community than among heterosexual populations. See SAGE, "Economic Security." [www.sageusa.org/issues/economic.cfm](http://www.sageusa.org/issues/economic.cfm) (last visited March 3, 2014). See also Siegal Bernard, T. and R. Leiber (October 2, 2009). "The High Price of Being a Gay Couple." New York Times. Retrieved from [www.nytimes.com/2009/10/03/your-money/03money.html?pagewanted=1&r=2](http://www.nytimes.com/2009/10/03/your-money/03money.html?pagewanted=1&r=2) (May 6, 2014).

**Health Care and Benefits.** Same-sex marriages are not recognized in Wisconsin and many other states. Protections afforded to married couples do not extend to same-sex couples. For example, state Medicaid's spousal impoverishment protections and estate recovery rules protect the non-institutionalized spouse but do not apply to the non-institutionalized partner in a same-sex couple. Same-sex couples may also be required to pay for multiple health care insurance policies rather than just one covering both partners. The disparate effect creates greater expenses for many same-sex couples. For more information, see Pizer, J.C., Konnoth, C. J., Mallory, C., and B. Sears "Extending Medicaid Long-Term Care Impoverishment Protections to Same-Sex Couples." The Williams Institute (UCLA), (June 2012). <http://williamsinstitute.law.ucla.edu/research/marriage-and-couples-rights/medicaid-reports-june-2012/> (last reviewed on March 14, 2014) or [www.SAGEusa.org](http://www.SAGEusa.org)