

The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (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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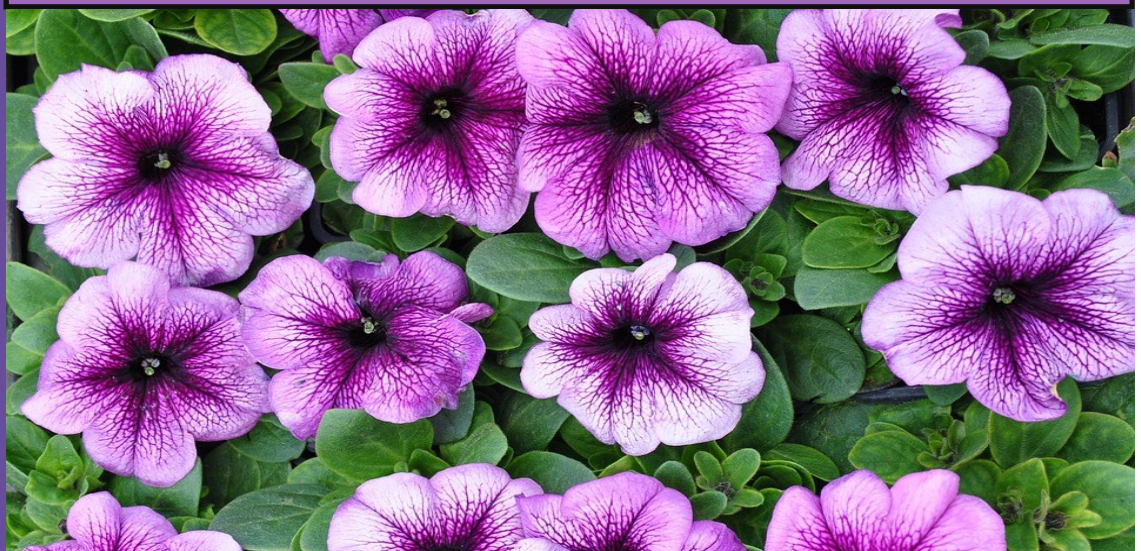
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Complaint Resources

The Guardianship Support Center provides neutral information on the topics of adult guardianship, protective placements, conservatorships, and advance directives. Occasionally we receive calls from individuals wanting to make formal complaints for various issues. The Guardianship Support Center is unable to accept or file complaints for any reason. Below is a list of resources for where to find information on related topics and where to make complaints on specific issues:

Where can I make a report of suspected abuse, neglect, financial exploitation, or self-neglect?

If someone is in immediate, life threatening danger, call the police or 9-1-1. The county or tribal contact information for elder adult and adult-at-risk helplines can be found at the link below. After a report is made, a case-worker reviews the report and determines what response is necessary.

Elder Adults and Adult-at-Risk Helplines - <https://www.dhs.wisconsin.gov/aps/ear-agencies.htm>

Where can I make a report of misuse of social security benefits by a Representative Payee?

If you suspect a Social Security Representative Payee has misused a beneficiary's benefits in some way, contact the Office of Inspector General Fraud Hotline. The Office of Inspector General website has information about potential violations, responsibilities of a representative payee, and the information needed to make a report.

Office of Inspector General Fraud Hotline - <http://oig.ssa.gov/report-fraud-waste-or-abuse>

Where can I file a complaint concerning health or residential care in Wisconsin?

A complaint against a caregiver, agency, or other Division of Quality Assurance regulated facility concerning quality of care or quality of life can be made to the Division of Quality Assurance. Information about how and where to file the complaint is available on the DQA website at the link below.

Wisconsin Department of Health Services, Division of Quality Assurance - <https://www.dhs.wisconsin.gov/guide/complaints.htm>

Where can I file a complaint against a Corporate Guardian?

The Division of Quality Assurance is responsible for approving corporate guardians in Wisconsin. If you wish to make a complaint against a guardian found in the [Directory of Approved Corporate Guardians](#), the complaint information can be found at the link below.

Wisconsin Department of Health Services, Division of Quality Assurance - <https://www.dhs.wisconsin.gov/regulations/guardianship/contacts.htm> ☐



May an agent/alternate agent select someone else to serve as agent either temporarily or permanently if they are no longer able or willing to serve?

No. The principal, and only a principal, may select someone to serve as his or her agent or alternate agent. An agent does not normally have the power to delegate authority to an adult who is not otherwise listed as an agent on the POA document.

Wisconsin Statute § 244.41(1)(e) does give the principal the ability to give a power of attorney for finance agent the power to “delegate authority granted under the power of attorney.” A POA-F agent would only have this authority if it is expressly stated in the power of attorney and if exercising that authority is not otherwise prohibited.

Can family members force an adult into a conservatorship if they don’t agree with how the adult spends their money?

Conservatorship is a voluntary action. No person can be forced into a conservatorship. In a conservatorship, the court does not make a finding of competency or incompetency. Instead, the court talks with the applicant to make sure the person wants a conservator and that the individual selected to be conservator is suitable for the position.

Typically, the conservatee (person requesting a conservator) would voluntarily petition the court to have a conservator appointed. This action might be taken when the conservatee wants someone to make his or her financial decisions, but also wants the court to

have oversight of the actions of that individual. A conservator has the same powers and duties as a guardian of the estate with limited exceptions.

Can family members consent to nursing home admission based on Wisconsin Statute § 50.06 when the principal does have a power of attorney for health care, but the power of attorney for health care did not give the agent authority for nursing home placement?

Nursing home admissions using Wisconsin Statute § 50.06 allow certain family members and friends to consent to admit an incapacitated adult without a court ordered guardianship or protective placement. To qualify for this type of admission, the incapacitated individual cannot have a valid power of attorney for health care. (See Wis. Stat. § 50.06(2)(2)). A power of attorney for health care that meets all of the requirements for a valid POA-HC, but leaves out the authority for an agent to consent to admit to a nursing home for long term care would not comply with this exception.

For more information about § 50.06 admissions see page 4-5 of the [Authority to Consent to Admission](#) publication. ☐



Medicare Part D Annual Enrollment Period

By the GWAAR Legal Services Team

Each year from **October 15 through December 7**, there is an Annual Enrollment Period (AEP) for Medicare Beneficiaries to enroll in and/or change their Part C and/or Part D plans.

During the AEP, a person can make any of the following changes:

- ◇ Join a Part D plan (if not already enrolled);
- ◇ Drop a Part D plan;
- ◇ Switch to a new Part D plan;
- ◇ Drop a Medicare Advantage plan and return to Original Medicare; or
- ◇ Join a Medicare Advantage plan with or without drug coverage.

Changes made during the AEP will become effective on January 1, 2018. Even if a person is happy with his or her current Part D plan, he or she should still re-evaluate that drug plan to determine if it will best meet his or her needs for 2018. Because Part D plans are privatized, they are allowed to change the terms of coverage every year, which means new Part D plans become available, and some Part D plans stop offering coverage in the state. Even if a plan continues to offer coverage into the following year, its monthly premium, formulary, pharmacy network, deductible, and copay amounts all could change! It's important that Medicare beneficiaries review their Annual Notice of Change (ANOC), which arrives in the mail on or before September 30th. This document notifies Medicare beneficiaries of the changes for their Part D plan that become effective January 1, 2018.

The most effective way to choose a Part D plan is by going on the www.medicare.gov website and using the “planfinder” tool. The planfinder asks a person to enter his or her zip code, prescription medications, and preferred pharmacies. Based on that information, the planfinder will list the plans that would be most cost effective for that person.

Unfortunately, research shows that fewer than 10% of Medicare beneficiaries are enrolled in the most cost-effective Part D plan. Name recognition or looking at a plan's monthly premium alone are not good ways to choose a plan. If a person is unsure how to pick and evaluate a plan, the person can utilize the following resources:

- Local Elder Benefit Specialist
- Case manager or social worker
- Board on Aging and Long-Term Care Part D helpline (ages 60+) at (855) 677-2783
- Board on Aging and Long-Term Care Medigap helpline at (800) 242-1060
- Disability Rights Wisconsin Part D helpline (ages 18-59) at (800) 926-4862 □

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.





Brown County v. A.M.Q. (In the matter of the guardianship of A.M.Q.)

Court: Court of Appeals

Appeal No.: 2015AP2614

Date: April 18, 2017

Case Summary: A.M.Q. appeals the order appointing her daughter, Margaret, as guardian of A.M.Q.'s estate. The Court of Appeals found that the circuit court properly appointed a guardian of A.M.Q.'s estate, but reversed the portions of the order appointing Margaret as guardian.

Upcoming Events

Self-Determination Conference

November 1-3

Kalahari Resorts | Wisconsin Dells, WI
wi-bpdd.org/index.php/wisconsin-self-determination-conference

AIRS Conference

November 2-3

Kalahari Resorts | Wisconsin Dells, WI

FOCUS Conference

November 15-16

Kalahari Resorts | Wisconsin Dells, WI

Note: *If your organization or agency is hosting a statewide event related to commonly-discussed topics in The Guardian and you would like to spread the word about the event, contact the GSC at guardian@gwaar.org. We may include it in our next quarterly publication.*

Case Details:

A.M.Q. and her late husband, Donald, were co-trustees of a revocable trust they established in 1999. They had five children, Paul, Peter, Margaret, Mary, and Marsha. When Donald passed away, A.M.Q.'s brother, Daniel, became the co-trustee. In April 2015, Paul signed a memorandum of understanding acknowledging that he had previously borrowed more than \$200,000 from the trust and he was prohibited from borrowing more without permission from all of the trustees. On May 6, 2015, Margaret became co-trustee when Daniel resigned.

On May 11, 2015, the trust's bank contacted Brown County concerned that A.M.Q. was being financially exploited after Paul, Peter and A.M.Q. had made several attempts to withdraw more than \$500,000 for Paul's business. A.M.Q. then amended the trust agreement naming Peter as co-trustee instead of Margaret.

In June 2015, the County filed for temporary guardianship of A.M.Q.'s estate. The court appointed Corporate Guardians of North East Wisconsin as temporary guardians. Several psychologists testified at the contested guardianship hearing. Dr. Pflugradt testified that A.M.Q. suffered from unspecified major neurocognitive disorder and had severe impairment of her executive functioning. The County, A.M.Q.'s GAL and her three daughters asked the court to find A.M.Q. incompetent, in need of a guardian of estate, and to name Corporate Guardians of Northeast Wisconsin as guardians of the estate. The court found A.M.Q. to be in need of a guardian of estate,

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but decided to appoint Margaret as guardian instead of Corporate Guardians of Northeast Wisconsin. The court also found A.M.Q. to be incapacitated at the time of the trust amendment naming Peter as co-trustee. A.M.Q. appealed.

A.M.Q. argued the court failed to make any of the statutory findings required under § 54.10(3)(a)3. by clear and convincing evidence and failed to state whether it had considered the factors listed in § 54.10(3)(c). The Court of Appeals disagreed with A.M.Q.'s arguments, explaining that the court did make specific findings by completing form GN 3170. The Court explained, while it is advisable to expressly address each factor listed in § 54.10(3)(c) the statutes only require the court to consider the listed factors. Completing form GN 3170 expressly or impliedly found the County satisfied its burden of proof.

A.M.Q. next argued the court erred by transferring full authority to the guardian of estate because the evidence suggests the primary concern was with her ability to administer the trust. The Court of Appeals rejected this argument because the court could have reasonably found that, due to the substantial evidence of financial exploitation, limiting the guardianship would not have been enough protection for A.M.Q.'s interests.

The Court of Appeals agreed with A.M.Q.'s final two arguments: 1) the court erred by appointing Margaret as guardian and 2) the court erred by voiding the May 2015 amendment to the trust agreement. The circuit court failed to follow the procedure outlined in §54.44(6) for how to nominate a new proposed

guardian. Additionally, the Court found the record contained no evidence regarding Margaret's qualifications to be guardian.

Finally, the Court of Appeals agreed the circuit court erred by voiding the amendment to the trust agreement because the decision does not explain whether the court applied the proper capacity standard. □

Jackson County v. G.B. and G.O. (In the matter of G.B.B.)

Court: Court of Appeals

Appeal No.: 2015AP2458

Date: June 29, 2017

Case Summary:

G.O. and G.B., both the sisters of G.B.B., were appointed as his guardians in December 2013. After a previous attempt by Jackson County to remove the sisters as guardians, the circuit court ordered their removal in 2015. In doing so, the court noted the sisters' inability to act in a rational manner to promote their brother's best interest, especially as it pertained to changes in his prescription medications. The Court of Appeals affirmed the removal.

Case Details:

After several years, the Jackson County Department of Health and Human Services (Jackson County) filed a petition to remove G.O. and G.B. as guardians on April 13, 2015. G.B.B. had been suffering from numerous mental health issues including schizoaffective disorder and catatonia among others. At the time of the first removal petition, doctors recommended

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(*GBB*, Continued from page 6)

treatment including medications and electroconvulsive therapy because his symptoms were not responding to multiple medication changes. The sisters allegedly refused these treatments for G.B.B. The County withdrew this petition for removal when G.O. and G.B. consented to the use of the new medication and agreed to submit an overdue annual accounting.

On September 1, 2015, Jackson County initiated the second action for removal because the sisters were not acting in G.B.B.'s best interests and had hindered his social worker's ability to place him in a less restrictive environment. G.B.B.'s physician wanted to transfer him out of acute psychiatric inpatient care to a community-based residential facility. The facility the doctor chose initially accepted G.B.B., but after G.O. contacted them several times, they withdrew their acceptance. G.B.B. was transferred back to the psychiatric nursing care unit because an alternate CBRF could not be found.

Another example occurred when G.B.B.'s physician contacted G.O. about changes he wanted to make regarding G.B.B.'s medications with guardian approval. G.O. expressed reservations about the medication the doctor wanted to use at the initial meeting. The second meeting between the two ended with G.O. becoming so rude that the doctor asked her to leave. The doctor also noted that she seemed unable to concentrate and lacked insight regarding the diagnoses he was explaining. Over the next several weeks, G.B.B.'s condition drastically worsened, and the doctor pushed G.O. to approve his requested medication changes, to which she was largely unresponsive.

At trial, the guardian ad litem recommended that the court remove both G.O. and G.B. as guardians because "they lacked the ability to make good decisions, resulting in multiple instances in which they had not acted in G.B.B.'s best interest, despite their good intentions." The circuit court agreed with the guardian ad litem and granted the removal.

On appeal, the sisters argued the evidence was insufficient to support the assertion that they failed to act in the ward's best interest and that removing them as guardians was an inappropriate remedy.

In affirming the circuit court decision, the Court of Appeals considered the doctors' testimony of G.O.'s difficult behavior and G.B.'s own testimony that she agreed with her sister's decision-making. The Court of Appeals rejected the sister's argument that the court acted outside of its discretion to order their removal because they provided no legal authority for why the decision was an abuse of discretion. □

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