

Authority to Consent to Admission or Placement to Nursing Homes, CBRFs, RCACs, and Hospice for Individuals Who are Not Developmentally Disabled or Mentally Ill

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I. Introduction

Wisconsin law regulates who has the authority to consent to an individual's admission or placement to long-term care facilities, nursing homes and certain other facilities. Who can consent to admission depends on the specific type of facility. This document covers admission to skilled nursing facilities (SNFs), community-based residential facilities (CBRFs), residential care apartment complexes (RCACs), and hospice programs/facilities. This document does not cover admission to Adult Family Homes.

II. Nursing Home/Skilled Nursing Facility (SNF) and Community-Based Residential Facility

In general, Wisconsin statutes treat skilled nursing facility and community-based residential facility admissions similarly in terms of who may admit the individual and under what circumstances. This section addresses both.

a. **The individual**

An individual who is capable of informed consent for health care may consent to SNF/CBRF admission for any purpose and any length of time.

If the individual later becomes incapable of making health care decisions and does not have a valid health care power of attorney, the court must appoint a guardian and order a protective placement for ongoing consent to care at the facility. See [Guardianship of Agnes T., 189 Wis.2d 520, 525 N.W.2d 268 \(1995\)](#); [Wis. Stat. § 55.055\(2\)\(b\)](#).

b. **Agent for an activated health care power of attorney**

A health care agent may consent to admission for the principal for:

- **Recuperative care (up to three months):** An agent may admit the principal for recuperative care following an inpatient hospitalization, unless the hospitalization was for psychiatric care. [Wis. Stat. § 155.20\(2\)\(c\)2.a.](#)

- **Respite care (up to 30 days):** An agent may admit the principal for up to 30 days if the principal lives with the agent and the purpose of the placement is to provide the agent with a vacation or to release the agent for a family emergency. [Wis. Stat. § 155.20\(2\)\(c\)2.b.](#)
- **Long-term care:** An agent may admit the principal for purposes other than recuperative care or respite if:
 - The document specifically authorizes this type of admission;
 - The principal is not diagnosed as developmentally disabled or having a mental illness at the time of the proposed admission; and
 - The principal is not protesting. [Wis. Stats. §§ 155.20\(2\)\(c\)2.c.; 155.20\(5\).](#)

Note: If the principal is protesting, a guardianship and protective placement order must be obtained (see Section II.c below).

If the power of attorney was executed in a different state, the agent may admit the principal for recuperative and respite care unless the document expressly limits the agent’s authority. An agent may admit the principal for long-term care if the document includes specific authorization. See [Wis. Stat. § 155.70\(10\)](#). For more information, see the GSC document “[Are Out-of-State Powers of Attorney for Health Care Effective in Wisconsin?](#)”

c. Guardian

In general, facility placement of an individual under guardianship requires a protective placement order if the facility is licensed for 16 or more beds or if the individual is objecting to a placement in a facility of any size. The below discusses situations in which a guardian may place a ward in a nursing home or CBRF without first obtaining a protective placement order.

A guardian of the person may admit their ward to a nursing home or CBRF for:

- **Recuperative and other care (up to 60 days):** A guardian may admit the ward to a facility that would otherwise require a protective placement order for up to 60 days if:
 - The ward is in need of recuperative care *or* if unable to provide for their own care or safety to the point that there is a serious risk of harm to the ward or others and placement is consistent with the ward’s right to placement in the least restrictive environment. The placement may be extended for 60 days if a protective placement petition is filed, or if no petition is filed, for 30 days to allow for discharge planning.
 - The ward may not be admitted for *treatment or services* related to

mental illness or developmental disability. [Wis. Stat. § 55.055\(1\)\(b\)](#).

- **Note:** If the ward was found incompetent in another state and either the guardian or the ward is currently a resident of Wisconsin, the guardian may admit the ward for up to 60 days for recuperative and other care. If the ward is currently out of state, the guardian may consent to an admission prior to the ward's arrival if the guardian intends to move the ward to Wisconsin within 30 days of the consent. If the ward needs a longer facility stay, the guardian must file a petition to transfer the guardianship to Wisconsin and a petition for protective placement within 60 days after admission. [Wis. Stats. §§ 55.055\(1\)\(c\)-\(d\)](#).
- If the ward actively protests the admission, the facility must immediately notify county protective services. The county protective services unit must visit the person within 72 hours. If the protest is ongoing, the individual must be released or the procedures for emergency/permanent protective placement must be initiated. [Wis. Stat. § 55.055\(3\)](#).
- **For a temporary stay (up to 30 days):** The guardian may place the ward for up to 30 days without a protective placement order if the ward lives with the guardian and the placement is provide the guardian with a vacation or temporarily release the guardian for a family emergency. [Wis. Stat. § 55.055\(5\)](#).

A guardian may admit the ward to a skilled nursing facility for long-term care if the guardian obtains a protective placement order from a court. The court must find that the individual:

- Has a primary need for residential care and custody;
- Has been determined by a court to be incompetent;
- As a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness or other like incapacities, is so totally incapable of providing for their own care or custody as to create a substantial risk of serious harm to oneself or others (serious harm may be by overt acts or acts of omission); and
- Has a disability that is permanent or likely to be permanent. [Wis. Stat. § 55.08\(1\)](#).

A guardian may also admit a ward to a SNF/CBRF as part of an emergency protective placement (see Section II.e. below).

d. Family member/Friend/Patient's Representative

A family member, close friend, or patient representative may admit the individual to a SNF/CBRF if:

- The individual is currently a patient in a hospital inpatient unit;
- The individual is incapacitated and does not have a valid health care power of attorney;
- The individual is not diagnosed as mentally ill or developmentally disabled at the time of admission; and
- No family members/friends at the same or higher level of priority objects to the admission, and no family member/close friend who lives with the person objects to the admission.

Two physicians or one physician and one advanced practice clinician must find that the individual is incapacitated and sign a DHS-provided form to that effect. [Wis. Stat. § 50.06\(4\)](#). The family member/close friend who will serve as patient’s representative must also complete a declaration on a DHS-provided form. Both must be filed with the register in probate in the patient’s county of residence and sent to the Adult Protective Services unit in the patient’s county of residence. [Wis. Stat. § 50.06\(8\)](#). Both must also be sent to the receiving facility and stored in the patient’s hospital medical record.

The individual retains the right to object to the admission. They may still be admitted; however, the facility must immediately contact Adult Protective Services. APS must visit within 72 hours and determine whether the objection is ongoing. If it is, they must determine whether the patient may safely be discharged or whether an emergency and/or permanent protective placement and guardianship must be pursued instead. [Wis. Stat. § 50.06\(2\)\(d\)](#).

For more information on this process, please see our [Patient’s Representative Frequently Asked Questions](#) document.

e. **Emergency/Protective Services Personnel**

Emergency services personnel (e.g., law enforcement, firefighters, and/or adult protective services staff) may admit an individual to a nursing home with an emergency protective placement order. [Wis. Stat. § 55.135](#).

If the emergency services worker believes that the individual is so incapable of providing for their own care or custody to the point where there is a substantial risk of serious harm to the individual or to others if the person is not immediately placed, the worker may take the individual into custody and transport them to an appropriate placement facility. The worker’s decision may be based on personal observation or a reliable report. The worker must make a written statement to the facility director specifying the basis for the placement.

The director of the facility or the director’s designee must inform the individual, both orally and in writing, of their right to contact an attorney and a member of their immediate family, as well as the right to have an attorney provided at public expense if indigent. The director or designee

shall provide the individual with a copy of the statement.

A petition for protective placement must be filed immediately. A preliminary hearing must be held within 72 hours (excluding Saturdays, Sundays and legal holidays) to determine whether there is probable cause to believe that the grounds for protective placement exist. If probable cause is found, a final protective placement hearing must be held within 30 days. For that 30-day period, the court may order temporary protective placement or other protective services as may be needed.

III. Residential Care Apartment Complex (RCAC)

a. **The individual**

An individual who does not have a guardian or an activated health care POA and who is capable of informed consent for health care may consent to admission to an RCAC. As part of the admission process, the individual must also consent to a risk agreement with the facility. For more information, see [DHS § 89.28\(2\)](#). The individual must be capable of recognizing danger, summoning assistance, and/or expressing need to staff.

If the individual later becomes incapable of making health care decisions, i.e., their health care POA is activated due to incapacity or a guardian of person is appointed, the facility has the right to terminate the care contract unless the individual shares an apartment with a competent spouse or a person with legal responsibility for the individual. The facility may choose to retain a tenant with an activated health care POA or guardian if the facility can ensure that adequate oversight, protection, and services are provided for the individual; if the individual's legal decision-maker has authority to make decisions to cover the person's area of incapacity; and that the legal decision-maker signs both the service agreement and the risk agreement for the facility.

The facility may also terminate the contract under the following circumstances:

- The tenant's needs cannot be met at the level of service that the facility is required to make available.
- The tenant requires more than 28 hours per week of supportive, personal, and nursing services.
- The tenant's condition requires the immediate availability of a nurse 24 hours a day.
- The tenant's behavior or condition posts an immediate threat to the health or safety of the tenant or others.
- The tenant refuses to cooperate in an examination by a physician or licensed psychologist of their own choice to determine their health or mental status and establish whether it is appropriate to retain the tenant or terminate their contract.

- The tenant refuses to enter into a negotiated risk agreement or revise a risk agreement when there is a documented and significant medical reason for doing so.

See [DHS § 89.29\(3\)](#).

b. Agent for an activated health care power of attorney

A health care agent may consent to admission for the principal only if the principal shares the apartment with a competent spouse or another person who has legal responsibility for the principal. The POA document does not need to contain specific authorization for this type of admission. [DHS § 89.29\(1\)](#).

c. Guardian

A guardian may consent to admission for the ward only if the ward shares the apartment with a competent spouse or another person who has legal responsibility for the ward (such as the guardian). [DHS § 89.29\(1\)](#).

IV. Hospice

In general, hospice services are available to individuals with a terminal condition, defined as “an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standards of medical care.” [Wis. Stat. § 50.94\(1\)\(d\)](#). The below discusses who may admit to hospice services and facilities.

a. The individual

Individuals who have the capacity to make their own health care decisions may self-admit to hospice services and placement in a standalone hospice facility.

b. Agent for an activated health care power of attorney

An agent for an activated health care power of attorney may admit the principal to hospice services and/or a standalone hospice facility if the decision is made in accordance with the individual’s wishes.

c. Guardian

A guardian may admit their ward to hospice services and/or a standalone hospice facility if the decision is in the best interests of the ward. Note that if the ward will receive hospice services in a CBRF or SNF setting, that setting may require a protective placement order as described above.

d. Family member/close friend

[Wis. Stat. § 50.94\(2\)](#) allows a family member or close friend to admit someone to hospice if the individual is incapacitated and does not have a valid power of attorney for health care or a valid living will. The family member or close friend who consents to the admission may also make health decisions related to the receipt of hospice care. The following requirements must be met:

- Two physicians or one physician and one advanced practice clinician must sign a statement indicating that the patient is incapacitated.
- A physician must certify that the individual has a terminal condition and that the family member or close friend is acting in accordance with the views or beliefs of the individual.
- The family member or close friend must also sign a statement certifying that it is their belief, to the best of their knowledge, that the individual would have selected hospice care.
- If feasible prior to the admission, the family member or close friend must provide notice of the admission to other family members in the statutory priority list, as well as notice of the right to file for temporary guardianship. If it is not feasible to provide notice prior to the admission, the family member or close friend must exercise reasonable diligence in providing it within 48 hours of the admission.

The individual may object to or revoke the admission at any time. In addition, a person who disagrees with a hospice decision may file a petition for temporary guardianship of the individual. They must prove that the person would not have chosen hospice care or admission to a hospice facility.

QUESTIONS?

Call the Wisconsin Guardianship Support Center at 855-409-9410 or email at guardian@gwaar.org.

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