



*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.

**To contact the GSC—**

**Call:**  
(855) 409-9410

**E-mail:**  
guardian@gwaar.org

**Website:**  
<http://gwaar.org/guardianship-resources>

Subscriptions to *The Guardian* are free. To subscribe, fill out our newsletter contact form.

## In This Issue:

<b>GSC Updates</b> .....	<b>2</b>
<ul style="list-style-type: none"> <li>• Court Operations</li> <li>• DHS Guidance for Long-Term Care Facilities and Residents</li> <li>• GSC Outreach</li> </ul>	
<b>Points of Interest</b> .....	<b>2-3</b>
<ul style="list-style-type: none"> <li>• Seeking Public Input: Governor’s Taskforce on Caregiving</li> <li>• Updated FAQs for Guardians During the Coronavirus Pandemic</li> <li>• Free NCLER Webinar: Legal Basics: Decision-Making Support</li> <li>• Medical College of Wisconsin Study Opportunities for Older Adults of Color</li> </ul>	
<b>News</b> .....	<b>3-6</b>
<ul style="list-style-type: none"> <li>• Americans with Disabilities Act Celebrates 30 Year Anniversary</li> <li>• GWAAR Partners with Attorney General Kaul on New Elder Abuse Hotline</li> <li>• <i>Wisconsin Lawyer</i> Continues Series on Elder Law</li> <li>• What You Need to Know About Stimulus Payments</li> </ul>	
<b>Case Law</b> .....	<b>7-8</b>
<ul style="list-style-type: none"> <li>• Dallen v. Dallen</li> <li>• Fond du Lac County v. S.N.W.</li> </ul>	
<b>Helpline Highlights</b> .....	<b>9</b>
<ul style="list-style-type: none"> <li>• An individual signed the standard Wisconsin health care power of attorney form last year. Can a nurse practitioner or physician assistant sign a statement of incapacity?</li> <li>• Who can sign a lease for a ward?</li> <li>• Can a ward’s assets be counted against a guardian if the guardian is applying for Medicaid?</li> </ul>	



## Updates from the Guardianship Support Center

As we continue into the summer in dealing with the coronavirus pandemic, the staff at the Guardianship Support Center will continue to do our best to provide you with the information and resources that you need. This is new territory for everyone; we know that there are many questions out there for which we do not have all the answers. We will continue to review guidance from the Department of Health Services, the courts, and others to provide up-to-date information for guardians, families, and their supports.

### ***Court Operations***

Some counties have begun to resume normal court operations; others are still conducting hearings by Zoom. Please contact your county clerk of courts and/or register in probate for any updates on hearing schedules.

### ***DHS Guidance for Long-Term Care Facilities and Residents***

The Department of Health Services continues to update guidance for [long-term care facilities](#), including for visitation, memory care, etc. Recent updates include information on safer visits for facilities with few or no known cases to help minimize risks while also making sure that residents are not isolated unnecessarily, and guidance for providing on-site hair salon and barber services at long-term care facilities. Ensuring the health and safety of residents continues to be a top priority; however, that can and should include the impacts of long-term isolation, as it becomes clear that the pandemic will likely continue to be a concern in coming months.

### ***GSC Outreach***

A number of our scheduled outreach events have been canceled or rescheduled, and others are still pending decisions from organizers. We continue to monitor guidance from the Department of Health Services and will resume outreach events when it is safe to do so.

In the meantime, you may contact [guardian@gwaar.org](mailto:guardian@gwaar.org) to request virtual presentations, webinars, or materials. We are happy to present to groups or provide training, or partner with others to present.

### ***Seeking Public Input***

The [Governor's Task Force on Caregiving](#) is asking for public input on draft policy proposals to help support and strengthen the direct care workforce, increase access to care, and improve the quality of caregiving in Wisconsin. The task force would like feedback from people in Wisconsin with a wide range of perspectives and experience, including family caregivers, paid direct support professionals, people receiving care, communities of color, and people living in urban and rural settings.

Materials on the [policy proposals](#) have been posted to the task force website, and information about a [public input meeting](#), that was held on June 29, has been posted to the Department of Administration's public notices website. A public input survey will be available on the [task force website](#) from June 29 through July 14.

Please share widely throughout your networks.





### **Updated FAQs for Guardians During the Coronavirus Pandemic**

The National Guardianship Association, in conjunction with the American Bar Association, recently updated its [FAQ](#) (frequently asked questions) based on questions it has received from guardians on how the pandemic affects their responsibilities. A [Spanish translation](#) is now also available.

### **Free NCLER Webinar: Legal Basics: Decision-Making Support**

On July 29<sup>th</sup>, the National Center on Law & Elder Rights will present a “legal basics” webinar, which will explore various decision-making models, tools for advance planning, and the essential role that supporters and advocates have in empowering and enabling decision supports. For more information and to register, please visit the [event website](#).

### **Medical College of Wisconsin Study Opportunities for Older Adults of Color**

The Medical College of Wisconsin’s Center for Advancing Population Science has developed two research studies to address the health needs for older adults of color in the Milwaukee area. The first provides free COVID-19 testing (including antibody testing) and prevention education sessions for Black individuals 50 and older who are living in senior housing, assisted living, nursing facilities, or who are currently homeless, while the second focuses on education for Black and Latinx individuals over 65 with uncontrolled diabetes. Compensation may be available for the diabetes study as well. For more information on the COVID-19 effort, please contact 414-955-7390. For more information on the diabetes education study, please contact 414-955-2128.



*Logo Credit: ADA National Network (adata.org) 1-800-949-4232*

### **Americans with Disabilities Act Celebrates 30 Year Anniversary**

*By the GWAAR Legal Services Team—for reprint*

July 26 marks 30 years since President George H. W. Bush signed the Americans with Disabilities Act (ADA) into law. This civil rights law prohibits discrimination against individuals with disabilities, with protections similar to those based on race, sex, age, religion, and sexuality. The purpose of the ADA is to give individuals with disabilities equal opportunities

in regards to employment, transportation, school, telecommunications and access to all public and private places that are open to the general public.

In the workplace, the ADA only applies to private employers with 15 or more employees, state and local governments, employment agencies, and labor unions. The ADA requires employers to make “reasonable accommodations,” or changes to comply with the ADA for those with disabilities who are qualified for the position. Accommodations are considered “reasonable” if they do not create an “undue hardship” or “direct threat” to the employer. Changes employers can make to comply with the ADA can include the application/hiring process, the way the job is performed, the work environment, or the job itself. Other reasonable accommodations include flexible scheduling and/or frequent breaks, alternative communication formats, providing accessible parking, and allowing service animals.

Note: service animals are different from emotional support animals, which employers are not required to allow because they are not covered under the ADA.

*(continued on page 4)*





*(ADA Anniversary, continued from page 3)*

Public transportation, including bus and train (rail) service, is also covered under the ADA. It is required that public entities make their programs, services, and activities accessible to individuals with disabilities. Transportation offered by private companies (such as taxis and airport shuttles) are required to make reasonable modifications to their usual ways of doing things when serving people with disabilities and take necessary steps to effectively communicate with customers with vision, hearing, and speech disabilities.

The ADA also requires telephone and internet companies to provide telecommunications relay services so that individuals with hearing and speech disabilities can communicate by phone. It also requires closed captioning on federally funded public service announcements.

Additionally, the ADA sets the minimum standards for accessibility of facilities by prohibiting private places of public accommodation from discriminating against individuals with disabilities. Examples of public accommodations include facilities such as hotels, restaurants, retail locations, doctor's offices, health clubs, sports stadiums, movie theaters, etc. The ADA also requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty and expense, and make "reasonable modifications" to their standard operations when serving people with disabilities (for example, making home deliveries, assistance reaching inaccessible shelves, etc.)

To view publications and frequently asked questions about the ADA, please visit <https://adata.org/ada-publications>.

For suggestions of ways to celebrate the 30<sup>th</sup> anniversary of the ADA, visit <https://www.globaldisabilityinclusion.com/post/30-things-to-do-to-celebrate-the-30th-anniversary-of-the-americans-with-disabilities-act>

## **GWAAR Partners with Attorney General Kaul on New Elder Abuse Hotline**

In May, Attorney General Josh Kaul announced the launch of a new [statewide elder abuse hotline](#) operated in partnership with GWAAR. The toll-free hotline, 1-833-586-0107, is available for community members and victims to contact for assistance in obtaining needed resources and making referrals to local authorities. The program also includes outreach to victims through online advertisements, print materials, and an online reporting tool on the [www.ReportElderAbuseWI.org](http://www.ReportElderAbuseWI.org) website.

## **Wisconsin Lawyer continues series on Elder Law**

Since January, *Wisconsin Lawyer*, the State Bar's monthly publication, has published an ongoing series on elder abuse, of interest not only to legal practitioners but also to older adults, their families, supporters, and caregivers. In the last issue of *The Guardian*, we linked to articles from January through March. Over the past three months, articles have included:

### April:

- [Solutions: What Happens When an Adult Can't Pay for a Guardian?](#)
- [Helping Clients in Nursing Homes and Assisted Living Facilities](#)

### May:

- [Career: Considering an Elder Law Practice?](#)

### June:

- [Solutions: The Future of Assisted Living: A Crisis in the Making?](#)
- [Adult Protective Services: On the Front Line Against Elder Abuse](#)





## What You Need to Know About Stimulus Payments

On March 27, 2020, President Trump signed an emergency order which provides economic impact payments (also referred to as “stimulus payments”) to most households in the United States. These payments were authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

### What is it?

The payment is an advance tax credit of \$1,200 per person (\$2,400 for married couples) and \$500 for each minor dependent child.

### Who is eligible?

Individuals who have income below \$75,000 per year and married couples who have annual income below \$150,000 per year (married filing jointly) will qualify for the full amount of the stimulus checks. The annual income limit for a head of household is \$112,500.

People with incomes between \$75,000 to \$99,000 per year (single) and \$150,000 to \$198,000 per year (married couples) will receive a *reduced* stimulus payment.

In order to qualify for the stimulus payment, individuals must be a U.S. Citizen, permanent resident or have [qualifying resident alien](#) status.

### Who is not eligible?

Individuals who earn more than \$99,000 (single) or \$198,000 (married) will not receive any stimulus payment. This also applies to a Head of Household filer with income greater than \$146,500. Also, anyone who is claimed as a dependent on someone else’s tax return will not qualify for the payment.

People who are incarcerated or who pass away prior to receiving the money are not eligible.

### Receiving the stimulus payment

The IRS reviewed people’s 2018 or 2019 tax returns to determine eligibility for the payment and obtain bank information to make automatic deposits of the stimulus payments. People who did not file taxes, but receive Veterans benefits or Social Security benefits such as SSI, SSDI, or retirement benefits, received their payments automatically.

By now most people have received their stimulus payments via direct deposit, paper check, or prepaid debit card in the mail. Anyone who has not yet received the payment and does not plan to file a 2019 tax return should use the non-filer [tool](#) to request a payment.

People who received their stimulus money via a prepaid debit card should keep the card even after the money on it has been spent. If the federal government approves a second stimulus payment in the future, the payment could be electronically loaded on that same card.

(Continued on page 6)



*(Stimulus Payments, continued from page 5)*

## How will this stimulus payment affect my public benefits?

The stimulus payment is an advance tax credit. As such, both federal and state law dictate that it is an exempt asset (not countable) for the first 12 months after receipt of the funds. It will only count as an asset if the money has not been spent at 12 months.

## What if the person I am a guardian or power of attorney for has passed away?

If the person passed away before the stimulus payment was received, the money should be returned to the IRS in one of the following ways:

### **If the payment was a paper check:**

1. Write "Void" in the endorsement section on the back of the check.
2. Mail the voided Treasury check immediately to the appropriate IRS location listed below.
3. Don't staple, bend, or paper clip the check.
4. Include a note stating the reason for returning the check.

### **If the payment was a paper check and you have cashed it, or if the payment was a direct deposit:**

1. Submit a personal check, money order, etc., immediately to the appropriate IRS location listed below.
2. Write on the check/money order made payable to "U.S. Treasury" and write 2020EIP, and the taxpayer identification number (social security number, or individual taxpayer identification number) of the recipient of the check.

Include a brief explanation of the reason for returning the money.

## Wisconsinites should return the money to:

Fresno Refund Inquiry Unit  
5045 E Butler Avenue  
Mail Stop B2007  
Fresno, CA 93888

For additional information and updates as new information becomes available, please visit <https://www.irs.gov/coronavirus>. □



**Title:** *Dallen v. Dallen*

**Court:** Court of Appeals, District I

**Date:** June 16, 2020

**Citation:** [2019AP1458](#)

### Case Summary:

This case serves as a reminder to pay attention to filing dates and statutory deadlines. Kathleen Dallen appeals an order from Milwaukee County Circuit Court granting guardianship of her mother, M.D., arguing that the trial court lost competency to proceed by failing to hold a hearing on the guardianship petition within the statutory time frame. The Court of Appeals agreed, reversing the decision of the circuit court and remanding the case for dismissal of the guardianship order.

### Case Details:

Richard Dallen, Kathleen's brother, filed a petition for guardianship of the estate of their mother, M.D., on March 12, 2019. The petition noted that M.D. had valid powers of attorney for both finances and healthcare naming Kathleen as agent. However, Richard also alleged that Kathleen had not taken necessary financial actions, thus necessitating guardianship. A hearing was set for May 16, 2019.

M.D. was appointed both a guardian *ad litem* and adversary counsel. On April 4, Richard filed an amended petition seeking guardianship of the person as well, and the hearing was rescheduled for May 8. On May 6, two days before the hearing, Kathleen filed an objection to the guardianship petition, citing the valid powers of attorney and concerns over a conflict of interest with Richard acting as guardian of the estate.

The May 8 hearing was adjourned until May 23. At the recommencement of the hearing, M.D.'s adversary counsel stated that M.D. objected to the guardianship and requested an independent evaluation. Counsel noted while the initial evaluation had taken place when M.D. was hospitalized, intubated, and unable to answer questions, M.D.'s condition had since improved and she was responsive. The parties agreed to adjourn the hearing so that a new evaluation could be performed.

In setting a date for the new hearing, the trial court used the date of the amended petition, April 4, to determine the last day of the statutory time period for the court to

make its determination, and came up with July 3, 2019. At the final hearing on June 25, the parties stipulated to guardianship, with Kathleen appointed guardian of the person and Richard guardian of the estate. The court left the powers of attorney in effect, noting that conflicts would be resolved in favor of the authority of the respective guardian. The order was entered on July 3, 2019.

Kathleen subsequently appealed, arguing that the trial court had lost competency to proceed because the June 25 hearing had been held more than 90 days since the initial petition had filed. *See* Wis. Stat. § 54.44(1)(a) ("petition for guardianship...shall be heard within 90 days after it is filed"). By her calculation, since the petition had been filed March 12, the last date for the hearing would have been June 10, 2019. Richard argued, on the other hand, that the court had correctly used the date of the amended petition to determine its timeframe, comparing his amended petition to the filing of an amended complaint in a civil case (in which the date of the amended complaint resets statutory timeframes for responses).

The Court of Appeals rejected this argument, finding that the 90-day period is mandatory, unconnected to the procedures for filing a summons and complaint in a civil matter, and that the rationale for procedures for other civil matters are dissimilar to those of a guardianship in any case. Timeframes in a civil matter are reset to allow other parties a chance to respond and take action. In a guardianship matter, on the other hand, no one receiving notice of the hearing is required to take any action or to file responsive pleadings. Further, the statute mandating the 90-day timeframe states that the hearing *shall* take place within this timeframe – meaning that this timeframe is not one that lies within the discretion of the court. The court also noted appellate courts have consistently found that that parties cannot stipulate to or waive the loss of power of the court to proceed.

As a result, the court found that the date of the initial petition was the correct date from which to begin the 90-day timeframe, and directed the circuit court to dismiss the petition because the adjourned hearing was held outside that timeframe. Practitioners and petitioners alike should both be aware of deadlines in these cases, particularly as court schedules pick up again as some counties begin to reopen their courthouses for in-person proceedings.





**Title:** *Fond du Lac County v. S.N.W.*

**Court:** Court of Appeals, District II

**Date:** June 17, 2020

**Citation:** [2019AP2073](#)

**Case Summary:**

S.N.W. appealed from an initial involuntary commitment and medication/treatment order, arguing that the court had lost competency to proceed because one of the medical experts failed to submit his report at least 48 hours before the hearing. The Court of Appeals ruled that the statutory timeframe for report submission does not impact the competency of the court and affirmed the decision of the circuit court.

**Case Details:**

S.N.W. was an inmate in Dodge County Jail in January 2019 when he began exhibiting behavior that concerned jail officials, including threats of violence, throwing food trays and punching doors, and expressing the belief that jail personnel were poisoning him. A deputy sheriff filed a petition for emergency detention under Ch. 51 and S.N.W. was transferred to Winnebago Mental Health Institute for evaluation and treatment.

Following a probable cause hearing, Dodge County moved for a change of venue, arguing that S.N.W. had last resided in a different county prior to his incarceration and that his case should be transferred. Venue was transferred to Fond du Lac County, at which point the Fond du Lac court set a final hearing date three days later and ordered medical experts to examine S.N.W. and submit reports. While one of the reports was submitted after the 48-hour deadline, the parties received it before the final hearing.

Wis. Stat. § 51.20(10)(b) notes that an individual’s counsel “shall have access to all psychiatric and other reports 48 hours in advance of the final hearing,” and S.N.W. thus argued that the doctor’s failure to meet this deadline caused the court to lose competency. In the alternative, he argued that the doctor’s report should have been excluded from evidence. He asserted that these timeframes are essential for due process, to guarantee counsel sufficient time to review reports and prepare for a hearing.

The Court of Appeals disagreed, finding that the statutory timeframe for counsel to have access to reports does not compare to the statutory timeframe in which a hearing must be held. Had the hearing gone beyond the deadlines, in other words, that would have impacted the court’s competency; in this instance, however, the report was made available prior to the hearing, and the circumstances of the change of venue hearing and other procedural matters left it to the discretion of the trial court to decide whether to accept the report or not.

The court further noted that Wis. Stat. § 51.20(10)(c) provides language regarding errors or defects: “The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.” The court also noted a prior opinion in *In re K.E.K.*, 2018AP1887, in which the court of appeals had noted that failure of the county to file its recommitment petition at least 21 days prior to the expiration of the previous commitment did not cause the court to lose competency. Finally, while S.N.W. argued that the failure to provide the report at least 48 hours before the hearing impacted his substantial rights, the court disagreed, noting that S.N.W. was not prejudiced by the fact that counsel had only 24 hours to review the report rather than 48. The court upheld the admission of the report into evidence as within the discretion of the court, and thus also upheld the commitment and involuntary treatment orders.

**Interested in Receiving *The Guardian*?**

Do you want more information about guardianship, POAs and related issues?

Signing up is easy with a link on our website:

[Guardian Newsletter Sign-Up](#).

You can also subscribe by emailing your name, email address, and organization to

[guardian@gwaar.org](mailto:guardian@gwaar.org).







## **An individual signed the standard Wisconsin health care power of attorney form last year. Can a nurse practitioner or physician assistant sign a statement of incapacity?**

Wisconsin's health care power of attorney statutes were updated in February 2020 to include nurse practitioners and physician assistants among the "advance practice clinicians" who may make a finding of incapacity for an individual, along with a physician, and the state's standard POA forms have since been updated to include that language.

However, the law also notes that this is the case unless the power of attorney document specifies otherwise. See Wis. Stat. § 155.05(2). Prior to February 2020, the state's standard forms specified two physicians or a physician and a psychologist. Although the state statute that the form's language draws from has been updated, the language on the form that the patient actually signed likely determines who can make the finding of incapacity. Health care providers and facilities with questions may wish to consult legal counsel with questions about specific situations or documents.

If an individual who previously executed a POA would like to enable an NP or PA to make a finding of incapacity, they may wish to complete a new POA using the [updated forms](#) to ensure that their wishes are followed.

## **Who can sign a lease for a ward?**

The authority to enter into a contract on behalf of a ward belongs to a guardian of the estate, if one has been appointed. Wis. Stat. § 54.20(3)(b). While a guardian of the person can help arrange for suitable housing and services, they may not sign a contract for the ward – whether for housing, a cell phone, Internet, or other services – unless they are also guardian of the estate or unless the court has specifically granted them this authority (e.g., for a small estate where no guardian of the estate has been appointed).

## **Can a ward's assets be counted against a guardian if the guardian is applying for Medicaid?**

No. While a guardian of the estate is directed to "take possession of the ward's real and personal property" upon appointment, the "title of all of the income and assets of the ward," including any interest and proceeds, remains vested in the ward, not the guardian. Wis. Stat. § 54.19(1). In other words, although the guardian's duty is to protect the ward's property, the property still belongs to the ward, not the guardian. Further, the guardian does have a fiduciary duty to their ward. Wis. Stat. § 54.20(1). That means that the guardian must protect and maximize the ward's money, and that the guardian cannot spend the ward's money in a way that would benefit anyone but the ward. Wisconsin law clearly prohibits a legal guardian from spending any of the ward's money for the guardian's own benefit. Since the ward's property still belongs to the ward and the guardian cannot use it for their own benefit, it should not be counted against the guardian for purposes of their own eligibility for benefits. □

## **What is the Guardianship Support Center able to help with?**

The GSC is a neutral statewide informational helpline for anyone throughout the state. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. The GSC is also unable to give legal advice or specific direction on completing court forms such as the inventory and annual accounting. The GSC does not have direct involvement in cases nor are we able to provide legal representation.

## **What are some other free or low-cost legal resources?**

Other resources include the American Bar Association's Free Legal Answers [website](#) where members of the public can ask volunteer attorneys legal questions. The State Bar of Wisconsin also offers a Modest Means Program for people with lower income levels. The legal services are not free but are offered at a reduced rate. Income qualifications must be met to qualify. For more information, visit the state bar's [website](#) or call **800-362-9082**.

