



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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National Center on Law & Elder Rights Webinar – Strengthening Rights and Ensuring Accountability in Guardianship Systems and Practices: Part One

NCLER recently presented a webinar on potential improvements to adult guardianship systems, including promotion of less restrictive alternatives, identification and redress of the risk of abuse and exploitation, and improving the court process for implementing guardianship to further safeguard rights. The presentation included information about models and promising practices to reform guardianship being implemented in three states that received federal Elder Justice Innovations Guardianship Improvement grants: Maryland, Minnesota, and Oregon. A [recording](#) of the webinar is available, as well as the [PowerPoint](#) presentation and a [resource guide](#).

University of Southern California Center for Elder Justice – Guardianship Podcast: Person-Centered Decision-Making: Options Less Restrictive Than Guardianship

USC's recent podcast features two attorneys with expertise in guardianship and alternatives discussing least restrictive methods to remain autonomous in decision-making and options available if capacity declines. The series includes two related podcasts: the first (32 minutes) focuses on health care and personal decision-making, and the second (41 minutes) focuses on financial and property decision-making. Both include an introduction explaining conceptual frameworks for the two kinds of decision-making. USC's website includes [several different options](#) to listen to the podcast.

State Bar of Wisconsin Public Interest Law Blog – Tip of the Month: Disclosing Invisible Disabilities on IDs Can Increase Safety

Individuals with non-apparent disabilities experience greater risks during encounters with law enforcement and first responders. A recent [blog](#)

[article](#) by GWAAR Lead Benefit Specialist Supervising Attorney Christine J. Huberty explains how hidden disabilities can be misunderstood and how to disclose this information on identification cards to improve safety.

Energy Assistance Available

Applications for energy assistance for low-income households are now available for the 2022-2023 program year. The program assists eligible households with heating and electric bills. For more information on eligibility requirements and to apply, visit [the Wisconsin Division of Energy, Housing, and Community Resources](#).

Free COVID-19 Home Tests Available

By the GWAAR Legal Services Team (for reprint)

The Department of Health Services recently announced a program to allow Wisconsin residents to continue to receive free COVID-19 self-test kits by mail. In a press release, the agency said, "The Wisconsin Department of Health Services (DHS) is launching an online program for Wisconsin residents to get free at-home rapid COVID-19 tests delivered directly to them. Starting September 1, Wisconsin residents can go to the [Say Yes! COVID Test website](#) and place an order for a package of five rapid antigen COVID-19 tests at no cost. Initial supplies will allow each household to order one package that will arrive in 1-2 weeks."

The website is easy to use, requiring only a name, address, and telephone number. Users are not required to create a unique account with login information, such as a user name and password.

In addition, private health plans and some Medicare plans are still required to provide reimbursement for COVID test kits purchased at participating pharmacies, and members of most Medicaid programs can receive free test kits at Medicaid enrolled pharmacies. ☐





Absentee Ballot Return Assistance for the November 8th Election

By Disability Rights Wisconsin (9/23/2022)

A federal court has affirmed the right of voters with disabilities to use ballot return assistance.

Background

Disability Rights Wisconsin is receiving questions from disabled voters who need assistance mailing or delivering their absentee ballots. These practices were restricted in the April and August elections because of litigation.

An August 31st court order clarified that federal law¹ protects the right of all disabled Wisconsin voters to receive assistance from a person of their choice to mail or deliver their absentee ballots. Any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk, or with any other part of the voting process, because of a disability must be permitted to receive such assistance. Voters are entitled to receive assistance from a person of the voter's choice, **other than the voter's employer or agent of that employer or officer or agent of the voter's union.**

Guidance for Voters with a Disability

If you need assistance mailing or returning your absentee ballot because of a disability, you may have a person of your choice mail your ballot, other than your employer, an agent of that employer, or an officer or agent of your union.

The person returning your ballot may also be the person who assists you with completing your ballot and/or who acts as your witness.

- It is up to you, the voter, to determine if you need assistance mailing or delivering your ballot because of disability.
- Election officials cannot inquire about your disability status beyond the questions described below. No additional steps may be taken to verify your disability or right to assistance.
- Clerks may not create additional requirements or require documentation from voters with disabilities who need ballot return assistance.
- You may check with your Municipal Clerk to determine where your assistor should deliver your ballot. Find contact information for your Clerk on My Vote Wisconsin: myvote.wi.gov/en-us/My-Municipal-Clerk

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¹ Judge Peterson's order referenced the Voting Rights Act, 52 U.S.C. § 10508:

"Under the Voting Rights Act, 52 U.S.C. § 10508, voters who require assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability are entitled to assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. To the extent that Wis. Stat. § 6.87(4)(b)1 prohibits such assistance, it is preempted by § 10508."

The Americans With Disabilities Act And Other Federal Laws Protecting The Rights Of Voters With Disabilities:

www.justice.gov/file/69411/download





(Voting Assistance, continued from page 3)

- As always, carefully follow the instructions for completing your absentee ballot and the certificate envelope. Make sure that the envelope includes your witness' name, signature, and address, including street number, street name, municipality, and zip code.
- We encourage voters to complete and mail their ballot as soon as possible to allow time for mail delivery.

Guidance for People Assisting a Voter with a Disability with Mailing or Delivering a Ballot

The Wisconsin Election Commission has instructed clerks that the person delivering the ballot for a voter with a disability may be asked the questions listed below. We recommend disabled voters explain this to the person assisting them, so they know they may be asked these questions.

From Wisconsin Election Commission Guidance:

When a clerk is presented with an absentee ballot delivered in-person to the clerk's office, the Commission believes that the clerk may ask the following questions:

- *Are you the voter? If not, then:*
- *Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:*
- *Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.*

- Clerks may not create additional requirements or require documentation from an individual returning the ballot for a voter with a disability.
- An individual may provide assistance to more than one disabled absentee voter, if requested by the voters.

Link to Wisconsin Elections Commission Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act: elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act

Questions?

For questions about this process or if you experience any barriers, please contact the Disability Rights Wisconsin Voter Hotline. DRW Voter Hotline: call 844-347-8683 or email info@disabilityvote.org

Hospitalized Voters and Ballot Return Assistance

A different process is available for hospitalized voters who need assistance with return of their ballot.

Information is available on the Wisconsin Election Commission website: elections.wi.gov/resources/brochures/hospitalized-electors





Guardianship Training Requirements – Effective January 2023

Effective January 1, 2023, newly appointed family and volunteer guardians must have completed training before they can be appointed. UW-Green Bay is currently developing the training curriculum, with consultation from the Guardianship Support Center, the Wisconsin Board for People with Developmental Disabilities, Disability Rights Wisconsin, the Wisconsin Registers in Probate Association, and others. The training will be available on demand online and on paper and will include a number of different topics. For guardianship of the person, training topics will include:

- The duties and required responsibilities of a guardian under the law and limits of a guardian's decision-making authority.
- Alternatives to guardianship, including supported decision-making agreements and powers of attorney.
- Rights retained by a ward.
- Best practices for a guardian to solicit and understand the wishes and preferences of a ward, involving a ward in decision making, and taking a ward's wishes and preferences into account in decisions made by the guardian.
- Restoration of a ward's rights and the process for removal of guardianship.
- Future planning and identification of a potential standby or successor guardian.
- Resources and technical support for guardians.

For guardians of the estate, topics will include inventory and accounting requirements in addition to the duties and responsibilities of a guardian and limits of decision-making authority.

The training will be available before the end of the year. The GSC will publish more information as it becomes available over coming months.

Disability Rights Wisconsin Publishes New Resources on Guardianship and Voting

Disability Rights Wisconsin has recently published new resources on the topic of Guardianship and Voting: Preserving and Restoring the Right to Vote. They include a step-by-step guide on how to ask a court to restore the right to vote if lost in a guardianship case. The resources are available both through [Disability Rights Wisconsin](#) and the [Wisconsin Disability Vote Coalition](#), and are linked from the Guardianship Support Center website as well.

Wisconsin residents who have lost the right to vote in a guardianship case have the right to petition the court to restore their voting rights. These resources explain how to determine if an individual has retained or lost the right to vote, and how to petition the court to restore the right to vote if that right was lost. People under guardianship, guardians, families of youth in transition, and organizations may find this information useful.

For help with questions about voting and guardianship, individuals and guardians may contact the DRW Voter Hotline at 844-347-8683 or info@disabilityvote.org or the Guardianship Support Center.

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Wisconsin Senior Medicare Patrol Fraud Alert: No New Medicare Cards

Wisconsin's [Senior Medicare Patrol](#) recently issued a [fraud alert](#) related to Medicare card scams, particularly relevant as we approach Medicare Open Enrollment season. The alert notes that Medicare cards have not changed and there are no new Medicare cards. Medicare cards are paper red, white, and blue cards issued directly by Medicare – there are no options with different colors, chips, or lamination.

Scammers often try to get Medicare and Social Security numbers from beneficiaries by asking if they've received their new card, claiming the existing card will expire, or claiming the card must list the beneficiary's doctor's name to avoid interruption of services. If you or loved ones receive this type of call, simply hang up – do not provide any information.

The alert also notes that while scammers' technology can make the phone number appear to be from Medicare, Social Security, or the IRS, no one from these agencies will call or visit beneficiaries. If you have concerns about your benefits or card, reach out to these agencies directly. ☐

Case Law



Title: *Sauk County v. W.B.*

Court: Court of Appeals, District IV

Date: September 9, 2022

Citation: [2021AP322](#)

Case Summary

This case deals with the intersection of powers of attorney and guardianship and the limits of an agent's ability to act contrary to the wishes of a health care principal. W.B., who had an activated health care power of attorney, expressed a desire to leave the nursing home in which he had been receiving care. Following evaluation, the court ordered guardianship and protective placement. W.B. appealed, arguing that his power of attorney document allowed his agent to continue his placement despite his objection and that the document was thus sufficient to negate the need for guardianship. The Court of Appeals held that a health care agent may not consent to continued placement over the individual's objection, and affirmed the guardianship and protective placement orders.

Additionally, the Court of Appeals also addressed the interpretation of "at any time" in two sections of Ch. 155—the requirement that an agent follow the wishes of the principal as expressed at any time and the principal's ability to revoke a POA at any time. For both, the Court concluded that the statute means exactly what it says: "at any time" is "at any time," regardless of capacity.

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(*Sauk v. W.B.*, continued from page 6)

Case Details

In 2012, W.B. executed health care and financial powers of attorney naming his son J.B. as his agent. In 2015, following a stroke, W.B.'s power of attorney for health care was activated. J.B. placed him in a nursing facility with 24-hour supervision, and he has been there since. In 2020, Sauk County filed petitions for guardianship and protective placement. Court-ordered reports noted that W.B. had repeatedly expressed the wish to leave the nursing home and move to his cabin up north and that a nurse had agreed to marry him, live with him, and provide him care. No such agreement existed, however, and because W.B. could not care for himself, the county instead sought guardianship and placement.

At the guardianship hearing, the parties disputed whether the existence of W.B.'s power of attorney document required dismissal of the petitions, or whether instead the POA should be invalidated in favor of guardianship and protective placement. The County and guardian *ad litem* argued that the document and Wisconsin statutes behind it did not permit an agent to mandate placement over the principal's objection. W.B.'s counsel, in contrast, argued that the documents permitted the agent to admit the individual and that that was sufficient to render guardianship unnecessary. The trial court asked W.B.'s counsel whether there were any legal impediments to W.B. leaving if he chose to do so. After counsel stated that he did not know, the court determined that W.B. met the criteria for guardianship and protective placement, revoked the POAs, and appointed the agent, J.B., to serve as guardian.

The primary issue on appeal was not whether W.B. met the criteria for guardianship and protective placement – in fact, W.B. conceded that he likely did – but whether W.B.'s advance planning rendered the guardianship orders unnecessary and thus re-

quired the court to dismiss the petitions, pursuant to Wis. Stat. § 54.46(1)(a)2. As a threshold matter, the Court of Appeals noted a determination of the sufficiency of the advance planning documents is a matter of judicial discretion. However, because W.B.'s argument was primarily about the POA and guardianship statutes, not his own document, the court reviewed on that basis rather than an abuse of discretion.

W.B. argued that while his POA document and the POA statutes provided him with a number of rights – including the right not to receive care over objection – those rights only applied before he was deemed incapacitated. In particular, W.B. noted that Wis. Stat. § 155.05(4) provides that the desires of a principal who does not have incapacity supersede the effect of the document, and argued that, conversely, an agent's decision may supersede the desires of an incapacitated principal. W.B. also argued that the provision of Wis. Stat. § 155.20(5) that an agent “shall act in good faith consistently with the desires of the principal,” as expressed in the document or by the principal at any time, was limited to any time *prior to incapacity*.

For both arguments, the Court found that neither the language of the POA statutes nor the language of W.B.'s document permitted his agent to override his wishes. First, the Court noted that W.B.'s POA included a notice that “no health care may be given over [his] objection,” which mirrors the mandatory notice language of Wis. Stat. § 155.30(1). Neither includes any language indicating that the individual must have capacity to exercise the right to object to the receipt or withdrawal of care. Second, the Court noted that if an agent is unaware of the principal's desires on a specific matter, the agent must make decisions in the principal's best interest—but since the principal had expressed a wish to leave the facility, the agent was not unaware of his desires and could not substitute the best interest standard.

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(Sauk v. W.B., continued from page 7)

Finally, the Court addressed two different statutory provisions that include the language “at any time” in Ch. 155: the provision that an agent must follow the wishes of an individual as expressed “at any time,” and the provision that allows a principal to revoke a POA “at any time.” See Wis. Stats. §§ 155.20(4) and 155.40. For the first, the Court noted that principles of statutory construction compelled it to follow the plain meaning of the statute: “at any time” is “at any time.” If an individual may express their desires at any time with an expectation that the agent follow them, the agent cannot then override the wishes of an individual who has expressed a desire and formulated a plan to leave a facility. For the second, the Court noted that while W.B. did not address his ability to revoke his own POA, it did not identify any limitations on his ability to do so. If W.B. were to exercise his ability to revoke his POA “at any time,” his agent would no longer be able to keep him in a facility – thus putting him back in a position of needing guardianship and protective placement.

The Court affirmed the orders of the trial court, finding that the language of W.B.’s specific document and the statutory framework for health care POAs did not permit W.B.’s agent to keep him in a placement against his wishes, and thus guardianship and protective placement were required to keep W.B. in the facility.

Title: *Clark County v. R.F.*

Court: Court of Appeals, District IV

Date: September 1, 2022

Citation: [2022AP481](#)

Case Summary

At the annual review of his protective placement in an adult group home, R.F. asked for the placement to be terminated. Clark County opposed ending the

protective placement. Following a hearing, the circuit court ordered the protective placement to continue. R.F. appealed, arguing that the County had failed to prove by clear and convincing evidence that continued protective placement would provide the least restrictive environment. The Court of Appeals agreed and reversed the order continuing the placement, remanding to the circuit court to enter an order allowing R.F. to transition to protective services instead.

Case Details

R.F., now 22, has been under guardianship and protective placement orders due to developmental disabilities and serious and persistent mental illness since he turned 18. His initial placement was in a behavioral health facility for minors; in 2020, he transitioned to an adult group home. This placement came up for review at the annual *Watts* hearing in 2021, and R.F. contested the continued placement.

The court held a hearing at which four witnesses testified. Two were in favor of continuing the placement: a psychologist who examined R.F. before the hearing and the owner/caretaker of the group home where R.F. was placed. Both described R.F. as “vulnerable” to exploitation. Two opposed continuing it: a psychiatrist who also examined R.F. and a woman who ran a group foster home where R.F. resided for several years as an adolescent. Both of these witnesses noted that while R.F. had some limitations and might require some assistance, he was generally independent with activities of daily living and did not need to be restricted to the group home.

Following witness testimony, the County argued that the evidence showed that R.F. was at “significant risk of exploitation” and that the placement should be continued.

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(*Clark v. R.F.*, continued from page 8)

The guardian *ad litem* agreed. R.F.’s attorney argued that the County had not met its burden of showing that protective placement was necessary, but that R.F. was willing to accept protective services if necessary.

The Court of Appeals noted the four statutory standards for protective placement: a) that the individual has a primary need for residential care and custody, b) that the individual is an adult who has been determined incompetent by a circuit court, c) that the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others, and d) that the individual has a disability that is permanent or likely to be permanent. Wis. Stat. § 55.08(1). R.F. conceded that the County had met its burden with regard to the second and fourth criteria, but argued that it had not met its burden for the first or third.

The Court’s analysis of these two items notes an additional requirement: the petitioner must show that the individual would be protectively placed “in the least restrictive environment” that meets their needs. Although this requirement is not included in Wis. Stat. § 55.08(1), it is elsewhere in Ch. 55, including the requirement that protective placement be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual (Wis. Stat. § 55.12(3)) and the declaration of policy for Ch. 55 generally in Wis. Stat. § 55.001. The County did not dispute that the petitioner must meet this requirement for due process and the standards of Ch. 55 to be met.

R.F. argued, and the Court agreed, that the County had not considered whether other services might suffice to meet his needs in a less restrictive

manner. While witness testimony and reports indicated that he could benefit from ongoing supervision, the Court noted that the County’s argument summarized these conclusions without pointing to specific evidence as to whether other services might exist that could meet R.F.’s needs or why these services might not be sufficient. It noted that any assessment of whether the group home was the least restrictive environment would need to include discussion of possible alternatives and their likelihood of success, and that this discussion was not present in the available evidence, either reports or testimony. Finally, the Court reminded the County that it had the burden of proof to show that the placement is the least restrictive environment – it was not R.F.’s responsibility to prove that it isn’t.

The Court concluded that a circuit court’s determination cannot be based on speculation or assumptions – that there must be evidentiary support in the record and a process of reasoning based on that evidence. Because that evidence was lacking, the Court determined that the County had not met its burden of proof to show that continued protective placement was the least restrictive environment. The Court of Appeals reversed the continued protective placement remanded to the circuit court to enter an order allowing R.F. to transition to protective services as appropriate. □

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

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You can also subscribe by emailing your name, email address, and organization to
[guardian@gwaar.org.](mailto:guardian@gwaar.org)





What happens if I don't check any of the boxes on the Wisconsin Health Care Power of Attorney form?

A properly executed Wisconsin power of attorney for health care is valid regardless of whether any boxes are checked. However, the checkboxes on the state form all indicate areas in which an agent must have specific authorization to make decisions – whether an agent may admit the principal to a nursing home or a community-based residential facility for long-term care, whether an agent may make decisions regarding withdrawing or withholding care at end of life, and whether an agent may make decisions if the principal is pregnant. Leaving the boxes blank is equivalent to checking the box for “no” – the agent is not given authority to make decisions in these areas.

If the principal wants the agent to be able to make these types of decisions, the boxes for “yes” must be checked. The principal may use the “Statement of Desires, Special Provisions, or Limitations” section of the form to limit an agent’s authority to only specific situations or provide additional guidance.

I am the guardian for an adult in Wisconsin. What access do I have to the ward's guardianship court records? What access does the ward have?

The subject of a guardianship proceeding and their guardian both have full access to the court files and records of that proceeding, as well as any subsequent protective placement proceedings. Wis. Stat. § 54.75, which governs access to court records, notes that records of guardianship proceedings are closed, but subject to access provisions in other statutes, including both Ch. 51 (mental commitments) and Ch. 55 (protective services and placement). Both of those chapters permit the subject of a proceeding to have access to court files and records. See Wis. Stats. §§ 51.30(3)(a), 55.22(1)(a).

Public access stations are available at the courthouse for individuals or guardians who wish to view the file without receiving any copies of documents; the register in probate and/or the court records office may be able to provide information on what, if any, fees there may be to search for a record if the case number is not known, any fees for copies, or any procedures to follow to view the file.



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**.

