

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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Points of Interest



Bringing Hope & Light to the Dementia Journey Conference, Aug. 13, 8:30-3:15, Onalaska

This free event is for all those impacted by dementia or interested in the cause, including family caregivers, individuals living with dementia or mild cognitive impairment, professionals in aging and dementia care, and community members who want to learn more. The event features Keynote Speaker Jolene Brackey, author of *Creating Moments of Joy*. View the [event flyer](#) or register online by [July 25](#).

Save the Date: Disability Vote Coalition Virtual Panel, Sept. 9, 11:30-12:30

The Disability Vote Coalition will be hosting a virtual event during Disability Voting Rights Week in September featuring a moderated panel discussion focused on some key issues regarding voting rights and disability. Check the [Disability Vote Coalition's website](#) for registration info in coming weeks!

Save the Date: WINGS Summit, Sept. 29, Stevens Point

Join Wisconsin WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) for a free all-day summit, "Beyond the Order: Centering Lives, Choices, and Change." Sessions will include topics such as the importance of self advocacy and seeking alternatives to court orders, the limited role of guardianships and interplay of partners involved in accessing services and supports, a lunch and learn on guardianship statistics and legislative updates, balancing protection and self-advocacy in guardianship of transition-age youth, and a panel on complex decision-making for guardians.

The event will take place on September 29, at UW-Stevens Point. The GSC will post a registration link on our website when it is available. Pending approval, CE credits will be available.

Save the Date: "A Day with Lewy – Lewy Body Dementia and the Caregiving Journey," Oct. 9, 2025

The Lewy Body Dementia Association and ADRCs of Dodge, Jefferson, Marquette, and Winnebago Counties

will be hosting an educational event on Oct. 9, 2025. Pending approval, CE credits will be available.

Self-Determination Conference, Oct. 20-22, Wisconsin Dells

[Registration is now open](#) for the annual Self-Determination Conference, "Self-Determination by Design! Your Life, Your Way." This event is sponsored by the Wisconsin Board for People with Developmental Disabilities and will take place at the Kalahari resort in Wisconsin Dells.

Ethics in Elder Mistreatment Podcast Series

The University of Southern California's Center for Elder Justice has released the fourth episode in its podcast series on Ethics in Elder Mistreatment. The latest episode, "Is surveillance a problem or the solution?" delves into issues surrounding cameras and other devices in long-term care facilities, from the benefits of offering information about the type of care residents receive to the potential for violation of privacy rights. This episode and past episodes are available through USC's [website](#), as well as through Spotify and YouTube.

NCEA Publication: Long-Term Trajectories of Older Adults Served by an Emergency Department/Hospital-Based Elder Mistreatment Response Program

In June, the National Center for Elder Abuse [published a new research translation document](#) sharing how ED/hospital programs like the Vulnerable Elder Protection Team may significantly reduce or stop elder mistreatment and improve post-discharge safety for elder mistreatment victims.

One Step Ahead: Revised Edition Now Available

A new edition of "One Step Ahead Resource Planning for People with Disabilities Who Rely on Supplemental Security Income and Medicaid" is now available through the Wisconsin State Bar's ["I Need Information"](#) page. Direct link: [One Step Ahead](#) (PDF). ☐





Additional GSC Publications Available in Spanish

The GSC has been working on Spanish translations of our most frequently requested documents and have several newly available over the past several months. We also added a section to the [GSC website](#) to collect all of our current Spanish publications in one place.

Newly available documents include:

- [Guardian of the Estate: A Checklist to Get Started](#)
- [Guardian of the Estate: How to Complete an Inventory](#)
- [Guardian of the Estate: How to Complete an Account](#)

Future Spanish publications include our Do-It-Yourself Consumer Packet for the Power of Attorney for Health Care and updates to our “Duties and Powers” brochures for Guardian of the Person and Guardian of the Estate.

Guardian Training Available Online and on Paper in Spanish

UW-Green Bay’s guardianship training course, mandatory for new guardians, is now available in Spanish both online and on paper. The Spanish version of the online training is available through the same link and same process as the English version. For the paper version of the training, in English or in Spanish, contact the training team at guardian@uwgb.edu or 920-465-2691.

Request for Public Comment – IRIS Program Renewal Application

Programs like IRIS operate under what is called a federal waiver. Waivers are applications to the federal government that allow DHS to have Medicaid programs like IRIS. The IRIS waiver gives participants in Wisconsin a way to self-direct their services and supports at home or in their communities.

Waivers need to be renewed and approved by CMS every

five years. The IRIS program’s waiver is due for renewal by January 2026. The Wisconsin Department of Health Services is currently requesting public comment [draft IRIS waiver renewal application](#) for 2026-2030. Comments may be emailed to DHSDMSIRISRenewal@dhs.wisconsin.gov or mailed to:

Wisconsin Department of Health Services
Division of Medicaid Services
Bureau of Programs and Policy
Attn: IRIS 1915(c) Waiver Renewal
PO Box 309
Madison, WI 53701-0309

More information is available on the [IRIS Waiver Renewal webpage](#).

Celebrating 60 Years of the Older Americans Act Advancing Health and Independence

On July 14, 1965, the [Older Americans Act](#) (OAA) was signed into law, creating the first U.S. system providing home and community-based services to older adults. Sixty years later, the law remains a cornerstone of support for older Americans.

The OAA helps older adults stay connected to their communities and remain independent in the places they call home. Annually, it serves [more than 14 million people](#) — about 1 in 6 older Americans — through services like meals, transportation, in-home care, and caregiver support. That adds up to more than 250 million meals, 14 million rides, and 30 million hours of in-home and caregiver support delivered each year.

These services are made possible by a robust aging services network created by the OAA. The network includes 56 state units on aging, 291 tribal organizations, more than 600 area agencies on aging, over 20,000 local service providers, and 80,000 volunteers. Together, this national network and the services it delivers represent a powerful, enduring investment in older adults.

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At this milestone, the Older Americans Act continues to demonstrate the impact of a national commitment to supporting older adults. Its programs remain vital to helping people live with health, independence, and dignity — goals that matter as much today as they did in 1965. Via the [Administration for Community Living](#)

Staying Up-to-Date with Benefit News

By the GWAAR Legal Services Team (for reprint)

People have recently experienced unexpected challenges coordinating Social Security benefits. This is due to several changes to their fraud protection protocols, bank account protocols, identity verification, and communication preferences. These changes could affect how you receive your benefits and how you work with the Social Security Administration (SSA). Anytime there is a change to the benefits you rely on, it could cause anxiety and frustration. Being informed about changes to your benefits is essential, but ensuring you get the correct and most up-to-date information is just as important. With access to social media and multiple sources of information at our fingertips, it's critical to assess the validity of the information you receive. Getting information from the source may be the best way to ensure you get the correct information and ease the frustration of sorting through incorrect information.

The best source for information about SSA and its benefits is on SSA's website. Visiting [SSA's Communication Corner](#) will allow you to read the official press releases and current news affecting SSA and your benefits. While the SSA has been a hot topic lately, staying up to date with all your benefits is essential. When you know about the current changes to your benefits, you can be better prepared and avoid interruptions to your benefits.

You can find up-to-date information about Medicare and Medicaid using a few resources. The Centers for Medicare and Medicaid Services (CMS) provides up-to-date information about news and changes to the

programs they support. You can find this information at [CMS's Newsroom](#). The Wisconsin Department of Health Services (DHS) offers news for Members of Wisconsin Medicaid. Just visit [Medicaid: News for Members](#) to find up-to-date information about current Medicaid issues. The DHS is also an excellent source for general information about the benefits you may be eligible for or are already enrolled in.

Other programs, like FoodShare and the U.S. Department of Housing and Urban Development (HUD), also offer up-to-date news to help you stay informed. You can find more information about [FoodShare news and updates at FoodShare: News for Members](#). HUD offers news and updates at [HUD News](#).

As things are quickly changing, it's hard not to become anxious about changes to the programs affording you the healthcare you need or the housing you depend on. To help ease this uncertainty, finding the most up-to-date information from a reliable source is essential. The best practice is to go straight to the source and visit the newsrooms of the programs you seek information about. Many of these resources also have email lists that you can sign up for. This will send the news directly to your inbox, making staying current on updates and news easy and convenient. If internet access is limited, visit a local library and ask for help accessing the above sources.

Medicaid and Funeral Planning

By the GWAAR Legal Services Team (for reprint)

If you receive Medicaid benefits, saving money for funeral and burial expenses can be a challenge. If you go over the asset limit for your Medicaid program, you could lose eligibility. Fortunately, there are ways to plan for your funeral and burial expenses without going over the Medicaid asset limit. Read on for general information about your options. If you are interested in any of these options, please contact an experienced Medicaid planning attorney before making funeral and burial arrangements.

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Life Insurance-Funded Burial Contract

A life insurance-funded burial contract (LIFBC) is a burial contract funded by your life insurance proceeds. This option allows you to contract for funeral and burial expenses ahead of time, guaranteeing payment with your life insurance policy. An irrevocable LIFBC will not affect your Medicaid eligibility.

To obtain a LIFBC, you should work with the funeral home of your choice. You should make it clear that you wish to set up a LIFBC as part of Medicaid planning. You will discuss your LIFBC options, including outlining the specific goods and services that the funeral home will provide. You will then assign the proceeds of your life insurance policy to the funeral home that is responsible for providing the designated goods and services. The funeral home will provide you with an itemized statement and the total cost immediately after you make the arrangements. This is called the statement of funeral goods and services.

It is important to make sure that you irrevocably transfer your life insurance policy so that the LIFBC is not an available asset for Medicaid. In an irrevocable transfer, the transferor (the insured person) cannot revoke the transfer. In other words, you cannot “take back” the life insurance policy if you change your mind. Because you cannot access that money, the life insurance policy’s cash value is not counted as an available asset. A revocable transfer would allow the transferor (the insured person) to revoke or cancel the transfer at a later time. If you change your mind about the LIFBC after a revocable transfer, you can “take back” the policy. Because this type of transfer allows you to have access to the cash value of the life insurance policy, that cash value is considered an available asset for Medicaid.

Please note that the value of your LIFBC will reduce the total amount of money that you can have exempt in a burial fund, which is discussed below. The LIFBC will reduce the excludable burial fund amount (up to \$1,500), dollar-for-dollar. For example, if you have a \$1,000 LIFBC, you can have up to \$500 exempt in a burial fund.

Irrevocable Burial Trust

These trusts allow a Medicaid beneficiary to keep up to \$4,500 in an irrevocable trust. Each member of a married couple may have up to \$4,500 in an irrevocable burial trust. To obtain an irrevocable burial trust, you should work with a funeral home. Make sure that they are aware that you are creating this trust as part of your Medicaid planning.

It is important to note that if the trust is designated as “irrevocable” and it contains \$4,500 or less, it will not count as an available asset for Medicaid eligibility purposes. This means that once you put money into the trust, you no longer have access to the funds. You should designate any interest or profits from the trust as “irrevocable.” If you do not make this designation, trust profits or interest will count as available assets for Medicaid purposes. Moreover, under Wisconsin Medicaid Rules, if you have more than \$4,500 in this trust, any amount over \$4,500 is revocable and is considered an available asset for Medicaid. Finally, like LIFBCs, irrevocable burial trusts reduce the amount that one can have exempt in his burial fund, dollar-for-dollar.

Burial Spaces

Medicaid beneficiaries may purchase burial spaces without affecting Medicaid eligibility. A burial space is an exempt asset, regardless of value. To purchase a burial space, contact the funeral provider or cemetery of your choice. You can purchase a burial space upfront with cash or through a LIFBC. The following are considered exempt assets for Medicaid: burial spaces, burial plots, crypts, urns, niches, and other traditional repositories for human remains; necessary and reasonable burial space improvements including: headstones, plaques, and markers; and arrangements for opening and closing the gravesite.

If you have a contract to purchase a burial space, and you are paying for this space in installments, the space is not an exempt asset until the balance is paid in full. That means that if you have only made half of your

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installment payments, the space is considered an available asset for Medicaid. An individual may have more than one type of space when reasonable. For example, a person may have a burial plot and a headstone. In addition, individuals may purchase burial spaces for their spouses and immediate family members, including minor or adult children, siblings, and parents. Medicaid beneficiaries may also purchase burial spaces for the spouses of immediate family members. If a beneficiary chooses to purchase burial spaces for immediate family members, the spaces must remain in the beneficiary's name.

Burial Funds

Burial funds are set aside and clearly designated for an individual's burial expenses. A Medicaid beneficiary may have up to \$1,500 in a burial fund, and the fund will not count as an asset for Medicaid. The funds can be used for an individual and the individual's spouse's burial, cremation, and other burial-related expenses. Medicaid members and their spouses may each have one burial fund. To obtain a burial fund, visit the financial institution of your choice. You can open a new account and request that the account be designated for and labeled for burial expenses. However, you are not required to open a new account. As long as the funds are clearly separate from your other household accounts and labeled as burial funds, Medicaid will not count them as available assets.

However, if you use the money in a burial fund for any other purpose, the fund will no longer be exempt and will be a countable asset. Please note that burial funds must be kept in a financial instrument, like a bank account or trust. If you keep cash in your home for burial expenses, you will not receive the benefit of the burial fund exemption. The amount of burial funds that can be exempt is reduced dollar-for-dollar by amounts held in LIFBCs, irrevocable burial trusts, and the face value of whole life insurance policies. A beneficiary wishing to exclude burial funds must be willing to provide the fund's location, account type, dollar amount, and account

number.

Life Insurance

Life insurance pays out proceeds upon the death of the insured or after a set period of time. Whole life policies or policies with a total face value of \$1,500 or less are excluded assets, regardless of their cash surrender value. To obtain a life insurance policy, contact the insurance agent of your choice to discuss your options. If the total face value of your life insurance policies exceeds \$1,500, then the entire cash surrender value is counted as an available asset. Term life insurance policies are typically not counted as available assets because they have no cash surrender value.

To speak with a Medicaid planning attorney, contact the [State Bar of Wisconsin's Lawyer Referral Service](#) or use the [directory provided by the National Academy of Elder Law Attorneys](#).

Medicare Coverage of Mental Health Treatment By the GWAAR Legal Services Team (for reprint)

According to the Substance Abuse and Mental Health Services Administration, an estimated one in eight older adults (over the age of 60) had a mental illness, and one in 11 had a substance use disorder in the past year. Many factors contribute to a higher risk of mental health concerns in older adults, including new medical diagnoses, life changes, losses of family members and friends, and social isolation. Unfortunately, a significant percentage of older adults who need mental health care are not receiving it. This may be because of stigma, cost, lack of transportation, and challenges navigating the health care system.

Medicare covers screenings and services that treat mental health concerns and substance use disorders. Medicare Part B covers outpatient care, like individual and group therapy, activity therapies like art therapy, partial hospitalization programs, and annual depression screenings. Part B also covers outpatient substance use

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disorder treatment, including services received at a clinic, hospital outpatient department, or in an opioid treatment program.

When choosing providers for Medicare-covered services, make sure they accept assignment. A provider who accepts assignment will accept Medicare's approved amount as payment in full for a service and will not charge you anything over that amount. If you see a provider who is not a medical doctor, like a psychologist or clinical social worker, make sure they are Medicare-certified. Medicare will only pay for covered services if the provider is Medicare-certified.

If you have Original Medicare, you will pay a 20% coinsurance for Part B-covered services after you meet your Part B deductible (\$257 in 2025). For most preventive services, including annual depression screenings, you pay nothing. If you are enrolled in a Medicare Advantage plan, contact your plan for help finding in-network providers and to learn about costs.

If you need prescription drugs for mental health treatment, your Part D plan or Medicare Advantage plan may cover them. Make sure the drugs you need are on your plan's list of covered drugs, or formulary. Part D plans and Medicare Advantage plans that include drug coverage are required to cover many drugs used to treat mental health conditions. This includes antidepressants, anticonvulsants, and antipsychotic medications.

If you need inpatient mental health services, these may be covered by Medicare Part A. This includes services you receive in a psychiatric hospital or general hospital for inpatient mental illness treatment and inpatient substance use disorder treatment. Part A covers up to 190 days of inpatient care in a psychiatric hospital over a person's lifetime. If you have used up these 190 days, Part A may cover additional inpatient mental health care in a general hospital. If you are receiving inpatient mental health care in a general hospital, Part A will cover up to 90 days per benefit period. In addition, Part A will pay for up to 60 lifetime reserve days if you are in the hospital for

more than 90 days.

Psychiatric hospitals and general hospitals have the same out-of-pocket costs. After you meet your Part A deductible (\$1676 in 2025), Part A will pay the full costs of the first 60 days of inpatient care in a benefit period. A benefit period begins when you are admitted to the hospital as an inpatient and continues until you have been out of the hospital or a skilled nursing facility for 60 days in a row. After day 60, you will have to pay \$419 per day to the hospital (in 2025). If you are using your lifetime reserve days, you will need to pay \$838 per day to the hospital (in 2025).

Finally, if you or someone you know is in crisis, call or text 988 or use the chat function at 988lifeline.org. Call 911 if you're in an immediate medical crisis.

How to Update your Direct Deposit Information with SSA By the GWAAR Legal Services Team (for reprint)

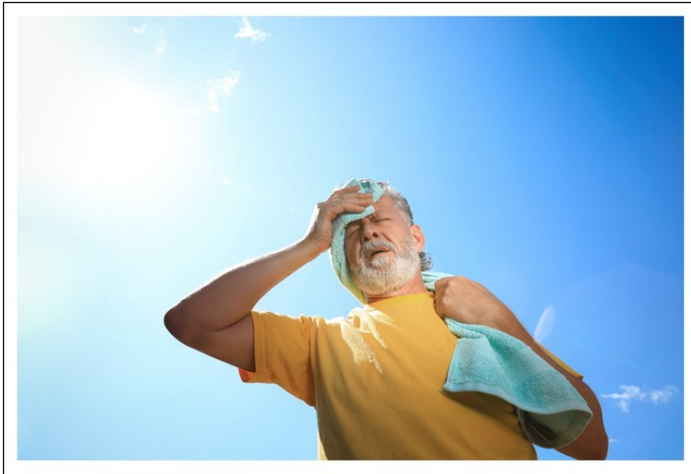
If your bank account has changed recently, remember to let the Social Security Administration (SSA) know so that you can continue receiving benefits on time. SSA offers multiple ways for beneficiaries to update their direct deposit information.

- Online: Direct deposit updates can be made online through a personal mySocial Security account (<https://www.ssa.gov/myaccount/>).
- By Phone: Before you call, go to your mySocial Security account (<https://www.ssa.gov/myaccount/>) to get a one-time code. Then call 1-800-772-1213 (TTY 1-800-325-0778). The representative will ask for the code.
- By Appointment: Call 1-800-772-1213 (TTY 1-800-325-0778) and tell the representative that you would like to schedule an appointment to update your direct deposit information.
- Contact Your Bank: If you are unable to create or

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access your mySocial Security account, you can ask your bank to send your direct deposit information to SSA using the Automated Enrollment (ENR) process. This lets your bank send your information directly to SSA.



Beat the Heat

By the GWAAR Legal Services Team (for reprint)

The summer heat is ideal for outdoor fun, but it's important to take precautions when engaging in strenuous activities or when spending prolonged periods outdoors in the hot summer weather. Excessive heat can lead to dehydration, heat stroke, heat exhaustion, and many other heat-related illnesses. People aged 65 and over are more prone to heat-related health issues and should take extra precautions as temperatures rise. If you have asthma, chronic health conditions, or heart conditions, you may be at high risk of heat-related illnesses. Knowing the signs of heat-related health issues will help you avoid severe or prolonged symptoms. Below is a list of symptoms associated with health issues resulting from excessive heat exposure. This list is not exhaustive, but it can help you spot heat-related illnesses and prevent severe health issues.

- Unusually heavy sweating
- Muscle cramps
- Dizziness
- Headache
- Weakness

- Nausea
- Fatigue

Severe symptoms may include:

- Passing out
- Low blood pressure
- Shortness of breath
- High temperature
- Seizures
- Confusion
- Altered mental state
- Rapid breathing
- Chest pain
- Rapid pulse

If you experience any of these symptoms, you could be in a health emergency and should seek professional help. Heat-related illnesses can be life-threatening, and you should take them seriously. There are ways to help reduce the effects of excessive heat on your body.

There are many things you can do to help your body cope with summer's excessive heat. These tips can help you avoid severe symptoms from heat exposure, especially if you lose power, are outside, or don't have access to air conditioning or fans. These are only suggestions, and you should always consult your doctor before spending extended periods outside in the heat.

The number one thing you can do to help your body when exposed to high summer temperatures is to stay hydrated. Dehydration can lead to various symptoms associated with heat exposure. You should always take plenty of water with you. It might be a good idea to plan and bring a cooler or research to find out where you can refill or purchase more water. Staying away from or limiting your intake of sugar, salt, caffeine, and alcohol will help you stay hydrated, as these substances interfere with your hydration level. With a bit of planning ahead, you can safely stay hydrated in the heat and reduce the dangerous effects of dehydration due to excessive heat.

Getting out of the heat can help reduce your risk of health issues. Taking breaks indoors can cool your body

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down enough to prevent overheating. If you don't have air conditioning at home, you can go to a mall or library to cool off. You can call 211 or go to the National Center for Health Housing website to find local cooling centers. Using fans can also help, but if the indoor temperature exceeds 90 degrees Fahrenheit, it may actually raise your body temperature instead of lowering it. Plan to take breaks indoors if you are outside for extended periods or if you're working outdoors.

To reduce the effects of excessive heat on your body, stay hydrated, plan on indoor breaks, and know the symptoms of heat-related illnesses to ensure that you are safe in the summer heat. You should consult your doctor if you have concerns about being in the heat and ask if any of your medications or health issues increase your risk of heat-related illnesses. Check your local weather and the U.S. Centers for Disease Control and Prevention (CDC) website to access HeatRisk to plan for the excessive summer heat. A little planning and knowledge will help you prepare for safe summer fun outdoors.

Summer Heat Resources

- HeatRisk—A CDC website that allows you to enter your zip code to learn your area's heat risk. You can assess your heat risk to plan for outdoor activities during the summer. <https://ephrtracking.cdc.gov/Applications/HeatRisk/>
- The National Weather Service—Fact sheets and interactive information are available to help you stay safe in the summer heat. <https://www.weather.gov/safety/heat-illness>
- World Health Organization—There is a wealth of information available about heat and its effects on health. <https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health>
- Wisconsin Department of Health Services—Shares a lot of good information about extreme heat resources. <https://www.dhs.wisconsin.gov/climate/heat.htm>

- National Center for Healthy Housing—Will help you find your state's cooling centers to get out of the excessive summer heat. <https://nchh.org/information-and-evidence/learn-about-healthy-housing/emergencies/extreme-heat/cooling-centers-by-state/>

Medicare Community Health Integration Services By the GWAAR Legal Services Team (for reprint)

As of January 1, 2024, Medicare began covering community health integration services. These services are provided by community health workers who are under the supervision of a Medicare billing practitioner.


Who is eligible?

During an annual wellness visit, a doctor can give you a social determinants of health risk assessment. Social determinants of health are non-medical factors that can impact your health and quality of life, such as your living environment, access to nutrition, employment status, literacy levels, and more. If your provider finds that you have social determinants of health needs, you may be able to get Medicare-covered community health integration services to address them.

What are Community Health Integration (CHI) Services?

Individuals such as community health workers (CHWs), nurses, or social workers, may perform CHI services. The same provider will then bill for the subsequent CHI services provided. These individuals will then help address the unmet social needs you may have which might be affecting your health conditions and/or your access to treatment for those conditions.

For more information on Medicare coverage for CHI services, visit: <https://www.medicare.gov/coverage/community-health-integration-services>

And for more information on community health workers in Wisconsin, visit: <https://www.dhs.wisconsin.gov/dph/community-health-workers.htm> 



Helpline Highlights



My loved one was adjudicated incompetent by a court and has a guardian of the person. Can they still complete a health care power of attorney?

No. An individual must be of sound mind to complete a health care power of attorney. Someone who has been adjudicated incompetent and has a guardian of person appointed is presumed not to be of sound mind for this purpose. See Wis. Stat. § 155.05(1).

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?

Health care power of attorney

No. Only the individual may select an agent and alternates. If a primary agent is no longer willing or able to act, they may resign and an alternate may step up. However, the primary may not name their own successor or name additional alternates if there are no remaining alternates listed.

Financial power of attorney

By default, no. However, Wis. Stat. § 244.11(2) allows the principal to give an agent the power to name one or more successor agents, who will have the same authority as the original agent. This power must be specifically granted to the agent in the power of attorney document.

In addition, Wis. Stat. § 244.41(1)(e) allows a principal to give an 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. □

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 and is not 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. For more information, visit the State Bar’s [website](#) or call **800-362-9082**.

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.





Title: *Kelly R. Rose v. C.R.R.*

Court: Court of Appeals, District II

Date: 07/02/2025

Citation: [2024AP1450](#)

Case Summary

This case revolves around a guardian's authority to limit contact between a ward and a family member. Kelly was appointed sole guardian for her son "Cory" and subsequently limited contact between Cory and his father, Russell. Russell filed a review of conduct petition alleging that Kelly was isolating Cory from family. He argued that a guardian can never limit contact between the ward and a family member. Kelly argued that preventing contact between the two was in Cory's best interests and that Cory did not wish to see his father. Following a hearing, the trial court found in Kelly's favor, allowing the limitation to stay in place. On appeal, the Court of Appeals upheld the trial court's decision and found that a guardian may limit contact if it is in the ward's best interest to do so. Because the Court was able to resolve the case on the best interests standard, it chose not to decide on the scope of a ward's right to free association and the extent to which it encompasses a right to refuse contact.

This case has been recommended for publication.

Case Details

Cory has Down Syndrome and Autism Spectrum Disorder and has needed significant care and supervision his whole life. Following his parents' divorce in 2009, the family court put in place orders for custody and placement, which would expire once Cory turned 18. The last of these orders, in June 2023, led to a substantial decrease in Cory's placement with his father, Russell, based on a number of concerns about Russell's language and conduct around Cory, as well as lack of supervision that resulted in Cory suffering serious injury after he took Russell's car keys and got into a car accident.

In November 2023, a few months before his 18th birthday, Cory's mother Kelly filed a petition for adult guardianship of Cory, proposing herself as sole guardian. Cory's father, Russell also filed a petition proposing himself as guardian. Following a hearing and extensive testimony, Kelly was named Cory's sole guardian of person in February 2024. In explaining its decision, the court pointed to evidence and concerns about Cory's language and behavior following time spent with his father.

Kelly then informed Russell that as of the date of appointment (February 27), she intended to limit any communication and visitation between Russell and Cory to a monthly email. Two days later, Russell filed a petition for review of conduct of a guardian, alleging that Kelly was isolating Cory from his family members in violation of Wis. Stat. § 54.68(2) (cm).

The court appointed advocacy counsel for Cory, who filed a motion to dismiss the petition, arguing that Cory had expressed a wish not to see his father and that his constitutional right to free association includes the right to choose not to associate with someone. Cory also argued that the guardianship court had already decided the matter when it denied Russell's request to be appointed Cory's guardian, since it had based that decision on concerns about the extent to which Cory's contact with his father disrupted his well-being. The court denied the motion to dismiss and scheduled a hearing.





(*Rose v. C.R.R.*, cont. from pg 11)

At the hearing, the court heard additional testimony about Kelly's concerns around contact between Cory and Russell, including Kelly's plan to pursue behavioral treatment with a therapist who had made it clear that Cory could not have outside influences during the period of treatment. In addition, although Cory's guardian *ad litem* had waived his appearance, the court asked Cory to appear to conduct a colloquy to determine his level of decision-making on contact with his father. The court determined that Cory did not have the capacity to exercise his First Amendment right to freedom of association, but that Kelly was acting in his best interest and therefore not "isolating" him from family. The court pointed to language in Wis. Stat. § 50.085 to support its conclusion that it may not issue an order compelling visitation if the visit would not be in the individual's best interest. It also pointed out that another subsection of Wis. Stat. § 54.68 would allow a court to take action against a guardian who is not acting in a ward's best interests. The court entered a written order denying Russell's petition on June 10, 2024.

Two days later, Russell filed another petition alleging the same grounds for review of conduct and alleging that "new information" showed that Kelly had lied to the court. This "new information" was an email purportedly from the behavioral therapist, stating that the therapist would not make any recommendations regarding contact until he had worked with Cory for a period of time. Following another hearing in which concerns about the authenticity of the email were raised, the court denied Russell's petition, noting that it had not based its prior order on any medical recommendations but rather on whether Kelly was acting in Cory's best interests by working to minimize dysregulation and continue appropriate treatment.

Russell appealed both orders denying his petitions to review Kelly's conduct, arguing that Kelly had isolated Cory from his father and that the requirement that a guardian act in a ward's best interests does not provide safe harbor from this violation. The Court of Appeals found in Kelly's favor. In its decision, the Court of Appeals noted that under Wis. Stat. § 54.68, if a trial court finds a violation of any of the grounds for review of conduct, the court has discretion to decide what, if any, actions to take to remedy the situation, and that the Court of Appeals will uphold that decision if it is rational and applies the correct legal standard to the facts.

The Court of Appeals found that although Kelly admitted to withholding contact between Cory and his father, that statute must be read in the context of other statutes. The section on family isolation explicitly incorporates Wis. Stat. § 50.085, which applies to individuals receiving long-term care and gives a court discretion to determine whether visitation with family is in the individual's best interests if the individual is not capable of expressing an opinion. The Court noted that it would be an absurd result if a court has the discretion not to compel visitation for someone in a facility, but does not have similar discretion for someone under guardianship.

In addition, the Court found that Russell's interpretation that a court must compel visitation regardless of a ward's best interest would also produce an absurd result: it would potentially force the guardian to violate the section of 54.68 that allows a court to take action against a guardian not acting in a ward's best interests. Thus, the Court found that the trial court had applied the correct legal standard by relying on the ward's best interests in support of its decision, as applied to the extensive fact-finding at the preceding hearings that laid out the concerns about contact between Cory and his father.

Kelly, Cory's guardian *ad litem*, the county, and Cory's counsel all asked the Court of Appeals to find that the trial court should have based its decision on Cory's constitutional and statutory rights to freedom of association. However, because the Court of Appeals based its decision on statutory interpretation, it opted not to review the constitutional ar-





(*Rose v. C.R.R.*, from pg 12)

guments, including what the standard might be to determine whether a ward has the capacity to exercise that right. This remains an open question for now. It is also worth noting that the trial court's decision supporting the limitation of contact was based on extensive testimony and evidence of a pattern of harm and disruption to the ward as a result of the contact. Although this decision does affirm a guardian's authority to limit contact, it also serves as a reminder that such decisions should not be made lightly and that guardians may want to consider what would be required to defend their decision if a court is asked to intervene.

Title: *Outagamie County v. M.J.B.*

Court: Court of Appeals, District III

Date: 05/20/2025

Citation: [2025 WI App 37](#)

Case Summary

This case involved the appeal of the circuit court's orders granting an involuntary commitment and an involuntary medication and treatment order for M.J.B. ("Mark"). Mark argued that the circuit court lacked the competency to proceed with the final hearing on his involuntary commitment because one of the two required examiners' reports was not made available to his attorney forty-eight hours in advance of his final hearing, as mandated by Wis. Stat. § 51.20(10)(b). Mark further argued that the problem could not be resolved by delaying the hearing, as the court had reached the statutory deadline for hearing and he did not wish to waive his right to a hearing within that time frame. The Court of Appeals agreed with Mark and concluded that the circuit court lost competency to proceed with the final hearing. As a result, the Court of Appeals reversed both the commitment order and the involuntary medication and treatment order.

GSC Note: Court followers may note that this is the third time this opinion has been released, following the County's motion for reconsideration and petition for Wisconsin Supreme Court review. This release is the final version and has been officially published. The County has filed a new petition for review, which remains pending as of this writing.

Case Details

On August 23, 2023, Mark was emergently detained following an incident in which he destroyed property at his mother's home, causing her to fear for her safety. On August 28, 2023, the circuit court held a probable cause hearing to determine whether Mark should be involuntarily committed under Wis. Stat. § 51.20. The court found probable cause to believe that Mark was mentally ill, a proper subject for treatment, and dangerous to himself or others. It ordered that Mark be evaluated by two experts and scheduled a final hearing for September 6, 2023.

Mark was examined by a psychologist and psychiatrist. The psychologist filed her examination report on September 1, 2023. The psychiatrist's report was faxed to the clerk of courts on September 2, but was not filed or made available to Mark and his attorney until September 5, one day before the final hearing. The County did not dispute Mark's attorney's statement that he first received access to the report on September 5.

At the final hearing, Mark objected to the circuit court's competency to proceed, arguing that the County failed to make one of two examiners' reports available at least forty-eight hours in advance, as required by Wis. Stat. § 51.20(10)(b). He further noted that, under Wis. Stat. § 51.20(7)(c), the final hearing could not be delayed any further, and he declined to waive his right to have the hearing within fourteen days of his emergency detention. The County did not dispute that





(*Outagamie Cty v. M.J.B.,* from pg 13)

the report was filed late but argued that the delay did not affect Mark's substantial rights because both parties received the report at the same time and because the County did not intend to call the psychiatrist as a witness.

The circuit court agreed with the County, found that the late filing did not affect Mark's substantial rights, and proceeded with the hearing. The court ultimately found that Mark was mentally ill, a proper subject for treatment, and dangerous under Wis. Stat. § 51.20(1)(a)2.b and 2.c. The court then entered orders for Mark's involuntary commitment and medication and treatment. Mark appealed.

In support of its position, the County relied on *Fond du Lac County v. S.N.W.*, 2019AP20873 (WI App June 17, 2020), an unpublished case suggesting that noncompliance with Wis. Stat. §51.20(10)(b) does not necessarily result in a loss of court competency. However, the Court of Appeals rejected this reasoning, emphasizing that the statutory requirements for involuntary commitment proceedings are strict and exist to protect the significant liberty interests at stake. The Court noted that *S.N.W.* had relied on language in the statutes for recommitment, which explicitly state that the court does not lose competency to proceed if a report is filed late, while the statutes for initial commitment do not include the same language.

The Court further explained that the failure to ensure timely access to both experts' reports essentially deprives a subject of the statutory right to two examiners, prevents a subject from effectively preparing for their final hearing, interferes with the subject's right to effective assistance of counsel, may deprive the subject of essential evidence, and incentivizes the late filing of reports, particularly those that may otherwise be helpful to the subject.

Because timely access to examiner's reports is central to the individual's due process in the statutory scheme of Wis. Stat. ch. 51 and because Mark's hearing could not be delayed any further, the Court of Appeals held that the circuit court lost competency to proceed with Mark's final hearing. The Court noted that in a situation where a hearing could be delayed and still be within the fourteen-day timeframe, or where the individual chooses to waive their right to a hearing within that period, the court would not lose competency as the individual's right to 48 hours' notice would be maintained. Here, however, it was not possible to cure the issue. As a result, the Court reversed the circuit court's orders for Mark's involuntary commitment and involuntary medication and treatment.

Following the original release of the opinion in January, the County filed a request for reconsideration, noting that the County did not believe it was responsible for the failure to timely file a report and make it available to Mark and his attorney. In response, the Court of Appeals withdrew its decision and republished it in February. The County subsequently filed a petition for Wisconsin Supreme Court review in which it noted for the first time the disparity between the date the report was faxed and the date it was filed. The Court of Appeals withdrew the opinion a second time to address this concern.

In several footnotes addressing this history, the Court of Appeals makes two points: first, that if the County had intended to argue that Mark's attorney had access to the report on Sept. 2, the date it was faxed to the court, not September 5, as he had stated at the final hearing, it forfeited that argument by not objecting to Mark's counsel's statement at the hearing or raising it prior to the petition for review. Second, the Court notes that while Ch. 51 is silent on whose responsibility it is to ensure that reports are timely filed, the burden is on the government to ensure due process and prove the necessity of commitment. The Court further explains that resolution of this question would not change its reasoning: the question in this case was not which government actor was "at fault" for a violation of Mark's due process rights, but rather whether the violation caused the court to lose competency to proceed. □

