

STATE OF WISCONSIN  
Department of Health and Family Services  
Division of Children and Family Services

DCFS Memo Series 2005 - 11  
October 12, 2005  
Re: Statewide Changes to Section  
48.977 Guardianships

To: Area Administrators/Human Services Area Coordinators  
Bureau Directors  
County Departments of Community Programs Directors  
County Departments of Developmental Disabilities  
Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Licensing Chiefs/Section Chiefs  
Tribal Chairpersons/Human Services Facilitators

From: Burnie Bridge  
Administrator

This memo describes changes to Section 48.977 guardianships created in recently enacted 2005 Wisconsin Act 25. These statutory changes **apply statewide to all Section 48.977 guardianships.**

### **Background**

In 2004, the federal Department of Health and Human Services (DHHS) granted a Title IV-E waiver request from the Wisconsin Department of Health and Family Services (DHFS) which allowed Wisconsin to implement a subsidized guardianship program. The waiver design required that the DHFS obtain changes to Wisconsin's current guardianship laws. Those changes were made in 2005 Wisconsin Act 25, the state's biennial budget, and were effective July 27, 2005. At this time the subsidized guardianship waiver will be implemented in Milwaukee County. However, a number of the statutory changes to Chapter 48 apply statewide. Those statewide changes are discussed in this numbered memo and the related language in Act 25 is attached.

### **Significant Changes**

The changes to Section 48.977 guardianships made by 2005 Wisconsin Act 25 apply to those guardianships arising under either CHIPS orders under s. 48.13, Stats. or JIPS orders under s. 938.13(4), Stats.

### **Non-Relative Guardians**

Under prior law, a guardian under s. 48.977 was required to be a relative. Under Act 25, a non-relative may petition to be and be appointed a guardian. The intent of this change was not to make it possible for anyone to be a guardian; rather it was to include those people who have a familial type of relationship with the child.

The court must find that the person would be a suitable guardian and that such appointment would be in the child's best interests. Information compiled through a caregiver background check provides necessary evidence of suitability or unsuitability for all proposed guardians. It is the policy of the Department to require caregiver background checks for all proposed guardians if a caregiver background check has never been done or the check is over two years old which is similar to the foster care rule on renewing background checks. The form, "Court Report for Transfer of Legal Guardianship, in e-WiSACWIS has an area to report to the court whether a background check was done for the guardian and all required persons in the household.

### **Length of Time in Out of Home Care**

Under prior law, a child (or juvenile, but child will represent both in this memo) had to be determined to be a child in need of protection or services (CHIPS or JIPS) and be placed in out-of-home care for one year before a petition for guardianship could be filed. Under Act 25, the child must still be determined to be a child in need of protection or services and must be placed in out-of-home care under a court order, or the child must be determined to be a child in need of protection or services and the report to the court made prior to CHIPS/JIPS disposition must recommend placement in the home of a guardian identified under s. 48.977(2), Stats. [Ref. s. 48.33(1) or s. 938.33(1), Stats.] However, there is no minimum time required, and the child may be placed directly into a guardianship after an initial CHIPS/JIPS disposition order is entered provided all other statutory requirements are met.

### **Guardianship Standards**

Before appointing a guardian, the court must make findings that the agency primarily responsible for providing services to the child has made reasonable efforts to prevent removal of the child from the home, and that the continued placement of the child in the home would be contrary to the welfare of the child. Except that the court need not make a finding of reasonable efforts to prevent removal of the child from the home with respect to a parent if any of the circumstances specified under s. 48.355(2d)(b) 1. to 5. or s. 938.355(2d)(b) 1. to 5., Stats. applies to a parent. These findings are typically made at the beginning of a case.

### **Disposition Report to the Court on the Proposed Guardianship**

Act 25 changes the information required to be in the report under s. 48.977(4)(e) which the agency primarily responsible for providing services to the child is required to submit to the court before the final hearing on the guardianship petition. If the child has been placed outside his or her home **for six months or longer**, the agency must submit to the court a summary of the permanency plan review determinations as required under s. 48.38(5)(e), Stats., and as much information relating to the appointment of a guardian as is reasonably ascertainable. If the child has been placed outside his or her home for **less than six months**, the agency will submit to the court a permanency plan if it has been prepared, the court report submitted to the court prior to **the CHIPS/JIPS** disposition [Ref. s. 48.33(1) or s. 939.33(1), Stats.] and as much information relating to the appointment of a guardian as is reasonably ascertainable.

### **No Change to Current Law**

Under Act 25, there is no change to current law requiring that the court find that: the child is likely to stay with the proposed guardian until he or she is 18 years old or for an extended period of time; that the proposed guardian would be willing and able to serve as guardian until the child is 18 years old or for an extended period of time; that it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child; and that the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian.

In addition there is no change to current requirements that the court find the agency has made reasonable efforts to return the child to his or her home, but that reunification of the child with the parent or parents is unlikely or contrary to the best interests of the child and further reunification efforts are unlikely to be unsuccessful or are contrary to the best interests of the child. The court is not required to make any of the identified reasonable efforts findings if any of the circumstances specified in s. 48.355(2d)(b) 1. to 5. or s. 938.355(2d)(b)1. to 5., Stats., applies to the parent.

### **Changes to e-WiSACWIS**

Three templates have been created in e-WiSACWIS that reflect the new guardianship law. Two of the templates are applicable statewide. The "Guardian Family Assessment" template gathers information that the caseworker and supervisor may use to assess a potential guardian and his or her family. This is an optional document and may not be necessary in every case if the information has been gathered with another form. It may also be used for Chapter 880 guardianships.

The "Court Report for Transfer of Legal Guardianship" summarizes the information relating to the appointment of a guardian that must be submitted to the court under s. 48.977(4)(e) in support of a petition for guardianship. This is a revised template which will allow a consistent format to be used by all counties for all guardianships under s. 48.977, Stats.

The third template, the "Subsidized Guardianship Agreement," will be used in Milwaukee County for subsidized guardianship cases. Subsidized Guardianship is a new case type; it will be a child only case.

### **Other Information**

The Subsidized Guardianship Waiver allows the program to be expanded during the five years of the waiver to other counties. Any expansion requires this Department to create and approve a detailed plan which must be submitted to the federal Department of Health and Human Services for its approval. Expansion must occur in accordance with existing state law. A brief description of the Subsidized Guardianship program is attached.

A comparison of guardianships established under s. 48.977 and Chapter 880 is also attached. Chapter 48.977 guardianships were originally developed to provide more permanence for children placed in out of home care for whom termination of parental rights and adoption was not in their best interests. This may assist agencies in choosing the correct type of guardianship for children in their care.

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MEMO WEB SITE: <https://dcf.wisconsin.gov/cwportal/policy>

Attachments:

WI Subsidized Guardianship Program

Comparison of Chapter 48.977 and Chapter 880 Guardianships

2005 WI Act 25, <https://docs.legis.wisconsin.gov/2005/related/acts/25>

## Wisconsin Subsidized Guardianship Program

The Subsidized Guardianship Program is part of a comprehensive Guardianship Permanency Initiative to improve permanency outcomes for children in out-of-home care by promoting the use of permanent legal guardianship as a permanency option. While guardianship has long existed as a permanency outcome for children, the lack of ongoing payments to guardians to care for children once permanency has been achieved has limited the effectiveness of guardianship as a permanency outcome and results in foster care cases remaining open longer than necessary to continue payments to the caretakers.

The Subsidized Guardianship program will be operated under a federal Title IV-E waiver to provide ongoing payments to persons becoming legal guardians of children in foster care, similar to the adoption assistance program for children who are adopted. The target population for the Subsidized Guardianship program is children placed with relatives licensed as foster parents. The subsidized guardianship program will make guardianship more feasible as a permanency outcome and improve the permanency options available for children placed with relatives.

The Guardianship Permanency Initiative is based on the following principles:

- Improving permanency outcomes for children and families through more effective permanency planning that is family-focused.
- Promoting the use of relatives as foster care placement resources.
- Ensuring the safety and well being of children through permanent placements with caring adults whom will raise the children to adulthood.
- Providing services to families in ways that address the needs of children but minimizes the public child welfare involvement in the lives of families.
- Operating the subsidized guardianship program in a manner similar to the adoption assistance program.

The federal waiver request was approved in September 2004. State enabling legislation to clarify the use of guardianship as a permanency option and establish the subsidized guardianship payment program was approved as part of the Governor's 2005-2007 state budget bill, 2005 Wis. Act 25. Initial implementation of the Subsidized Guardianship program is planned for September 2005. Once implemented, the program can be operated for five years under the federal waiver, which can be renewed.

The subsidized guardianship program will be implemented initially in Milwaukee County by the Bureau of Milwaukee Child Welfare. Approximately 175 children with existing guardianship orders will be converted to subsidized guardianship in the Fall of 2005. A guardianship subsidy agreement must be completed before payments can be made to guardian caretakers. Approximately 650 children in Milwaukee will be part of the target population for the program over the 5-year period. The waiver request includes the potential to expand the program to the rest of the state, although no timeframe has been set for expansion of the program.

As a condition of the federal waiver, the guardianship program must be cost neutral to the federal government and an independent program evaluation including random assignment of cases must be conducted. Target population cases will be assigned to experimental and control groups for evaluation purposes, with only the experimental group being eligible for subsidized guardianship payments.

## COMPARISON OF CHAPTER 48.977 AND CHAPTER 880 GUARDIANSHIPS

Section 48.977 guardianships were created as an alternative to Chapter 880 guardianships to address the issue of permanency for children who had been adjudicated children in need of protection or services under s. 48.13, Stats, or juveniles in need of protection or services under s. 938.13(4), Stats. and placed in out of home care. Section 48.977 guardianships specifically require the court to find, before granting the petition, that it is likely that the guardian will be fit and willing to be the child's guardian until the child is an adult, or at least for an "extended period of time," and that the child will want the person to be his or her guardian until the child is an adult, or at least for an "extended period of time". There is no durational requirement for Chapter 880 guardianships.

The Section 48.977 standard requiring that the person be "fit and willing" reflects the concern that the proposed guardian be physically able to complete their responsibilities as guardian for the child. Chapter 48 guardianships involve a physical care giving role. In contrast, Chapter 880 guardianships, may involve physical care of the child but do not require it.

In addition Section 48.977 guardianships explicitly recognize that the child at issue was adjudicated a child in need of protection or services, require the court to accept into evidence the child's permanency plan, if available, or CHIPS/JIPS disposition report, and requires the child welfare agency to file as much information with the court as is reasonably ascertainable about the guardianship.

Provision	Chapter 48.977	Chapter 880
Target population	Minors who are adjudicated children in need of protection or services under s. 48.13, or juveniles in need of protection or services under 938.13(4) and placed in out of home care s. 48.977(2)	Minor, incompetents and spendthrifts. s. 880.03
Expected length of guardianship	Expectation that the guardianship will last until the child is 18 years old or for an extended period of time.	No specific expectation, can be used for short durations
Who may petition to have guardianship established?	DHFS, county human services or social services agency, licensed child welfare agency, the child, the child's legal custodian or guardian, a person with whom the child is placed and who is nominated to be the guardian, the corporation counsel or district attorney representing the agencies. [s. 48.977(4)]	Any relative, public official or other person. s. 880.07
Who may be a guardian?	Guardian must be a person. Parent(s) may not be guardians.	Must be an individual, except for certain guardians based on incompetence, s. 880.01(3)No other restrictions as long as competent and willing. Guardian may be a parent. [s. 880.09]
Does the child have to live with the guardian?	Yes, at the time guardianship is ordered.	No
Termination of guardianship	Terminated when child turns 18 years old or by order of the court, unless shorter guardianship period is ordered by the court. [s.	Terminated when the child legally marries or when the child turns 18 as long as the child is competent; or when any incompetent regains

	48.977(7)], If the court enters a termination of parental rights order then guardianship ends s. 48.977(7)(e)	competency, by court order or as otherwise removed or discharged by the court. ss. 880.16, 880.251, 880.26, 880.34.
Powers of the guardian	Unless specifically limited by the guardianship order, the guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, including the child's general welfare. This includes the authority to consent to marriage, enlistment in the military, medical treatment, and driver's license. The right to represent the child in legal actions, and the right and duty to visit the child and generally the rights and responsibilities of legal custody.	Specific duties as designated by the court. Much greater emphasis placed on fiduciary responsibilities for the ward's estate.
May responsibilities and powers of the guardian be limited?	Yes, by specific order of the court. [s. 48.977(5)(b)]	Allows petitioner to apply for limited guardianship of property, which allows the ward to manage some of his or her own property. [s. 808.37]
Can guardian be removed?	Yes, by order of the court	Yes, by order of the court. Upon petition of the ward if 14 or older for appointment of another guardian if in the child's best interest, for cause, failure to file report with the court or mismanagement of the ward's accounts, guardian moves out of state, becomes incapable or unsuitable.
May child be subsequently adopted?	Yes, but requires grounds for TPR be established, which can be difficult after the CHIPS order is ended.	Yes, but requires grounds for TPR be established.
Background check required?	If receiving Kinship Care, the guardian must undergo a background check. If receiving Subsidized Guardianship payments, must have received a home study as a foster care licensee prior to guardianship including background check. By DHFS policy a caregiver background check must be completed for all proposed guardians who have never had a check completed, or if their background check is over two years old.	Court may request background check or home study on nominated guardian.
Must guardian be licensed?	No for Kinship Care and	No.

	Subsidized Guardianship payments. Yes for foster care payments.	
Ongoing supervision of guardianship	<p>If the CHIPS/JIPS order is ended, then there is no further supervision over the guardian. The court may continue the CHIPS/JIPS order for service reasons, or to continue foster care payments, in which case standard permanency planning requirements may apply under s. 48.38 Stats.</p> <p>For Kinship Care and Subsidized Guardianship payments the agency or Department makes annual contact with family.</p>	<p>Annual accounting report to the court required, must include educational information if the ward is a minor. [s. 880.25]</p> <p>Supervision primarily provided by court, but often initiated by persons with an interest in the minor or the minor's accounts.</p>