

Policy Name: **Guardianship under Chapters 48 and 54 and Subsidized Guardianships**

Policy Number: OCM 27.00 IA 30.00

Subject: Guardianship; Legal Permanence; Transfer of Guardianship; Vacating a Guardianship Order; Revising an Order for Guardianship; Terminating Guardianship; Court Processes; Subsidized Guardianship

Replaced Policy: Termination of Legal Guardianship (2011)

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Any information referenced within this document is considered to be a part of this policy with the exception of the "related resources" section.

Summary:

This policy sets forth the statutory requirements and the Initial Assessment Specialists (IAS) and Case Manager's (CM) process in facilitating petitions for guardianship under Chapters [§54](#) and [§48.977 of Wis. Statutes](#), as well as subsidized guardianship agreements. This policy describes the procedures associated with each type of guardianship petition and addresses the difference between filing for a transfer, revision, or termination of legal guardianship under Chapters [§54](#) and [§48.977](#).

For children who have been determined to be a Child in Need of Protection or Services (CHIPS) a petition for guardianship under Chapter [§48](#) is applicable; while non-CHIPS cases would pursue guardianship under Chapter [§54](#) in most cases. Please note Temporary Guardianships are addressed in separate policy, [IA 27.00 and OCM 21.00](#).

Policy:

This policy establishes a consistent process for handling petitions for guardianship under [Chapters §48](#) and [§54](#) for IAS and CMs to ensure child permanency is achieved.

Pursuant to [Chapter §54 Wis. Stats](#), the court may appoint a guardian of the minor ([§54.46.\(2\)](#)), a successor guardian ([§54.54](#)), a temporary guardian ([§54.50](#)) or standby guardian ([§54.52](#)) for a minor if a guardian becomes incompetent or dies, is removed/terminated by order of the court, or resigns. The court on its own motion or based upon a petition of an interested person may appoint a successor guardian. Most petitions for guardianship filed under [Chapter 54](#) are non-CHIPS cases. When DMCPS is not involved in helping the petitioner to file a Chapter 54 guardianship, the court may request that DMCPS

release CPS records to the court and/or testify regarding those records. In the event that a CHIPS or CAN case is open, then DMCPs and/or ongoing agencies may assist the petitioner to file a Chapter 54 guardianship petition. See page 9 for more detail about DMCPs' and the ongoing agency's role and responsibility.

Pursuant to [§48.977 Wis. Stats](#), a transfer, termination or revision of guardianship may occur. **Transferring** guardianship to a relative or another caregiver is done to ensure children have a permanent living situation when reunification or adoption is not an option; and, transfer of legal guardianship has been determined to be the best plan for legal permanence.

Once guardianship is awarded, circumstances may change with the children or in the home of the biological parent(s), and it may be the wish of the parent to **terminate** the existing legal guardianship order. Thereby, allowing the child(ren) to be reunified with the biological parents, pending the court 's approval that reunification is in the best interest of the child. A termination of guardianship is informally referred to as a *reversal*.

A **revision** of a guardianship order may be pursued by a non-parent if the legal guardian is unable or refuses to fulfill his/her guardianship duties or wishes to modify the guardianship agreement.

During the guardianship petition process, a home study (of the person seeking placement of the child) may be necessary. A **home study** assesses members of all households involved (the petitioner, parent, or proposed guardian). The person/entity responsible for conducting the home study is determined based on the type of guardianship petition being pursued. DMCPs is only responsible for conducting home studies in the following circumstances:

- A parent does not have guardianship, wishes to terminate an existing legal guardianship order (under [§48.977](#)), and has completed a petition to terminate guardianship.
- A legal guardian refuses or is unable to discharge his/her duties as guardian and a non-parent is seeking to become the guardian ([§48.977\(6\)](#)). Note: If a home study or initial assessment of CAN finds the legal guardian is neglectful this may qualify as a revision of legal guardianship due to *removal of cause*.
- Court order (under [§48.977](#) or [§54 Wis. Stats](#))

A home study should only be conducted by DMCPs if the caller is the petitioner, the petitioner's legal representative, or a Milwaukee Children's Court contact (in the circumstances noted above). See the [Guardianship Access Screening Job Aid](#) for further guidance.

If a home study has been completed in the last six months, additional home studies on the same household should not occur unless there is a new incident or allegation or if there is a significant change in circumstances. If Access receives a referral containing an allegation of child abuse and neglect (CAN) and a guardianship home study request, the CAN referral should be assessed first. If the CAN assessment reveals safety concerns if the child were to resume placement in the parent's care and if a transfer of guardianship is essential to confirming a child's safety, then the IAS must confirm the guardianship petition has been filed and granted to the identified safe caregiver. If the CAN assessment reveals no safety

concerns and the caller requesting guardianship should be referred to [Milwaukee County's website](#) to obtain information about filing for a Chapter 54 guardianship.

Procedures:

Transfer of Legal Guardianship under Chapter 48 (non-subsidized)

A Transfer of Guardianship may occur when the guardianship of a child(ren) currently under a CHIPS order is transferred to a person, relative or non-relative, with whom the child has been placed or with whom placement is recommended and, further, that person is willing to assume the responsibilities of a guardian for that child(ren). Persons authorized to request a Transfer of Guardianship are detailed in [§48.977\(4\) Wis. Stats.](#)

In order to effect such a transfer, the following criteria must be met in accordance with [§48.977\(2\)\(a-f\) Wis. Stats.](#), summarized below in pertinent part:

- The child(ren) has been or continues to be in placement outside his/her own home under a court order (either CHIPS);
 - The child(ren)'s parent(s) are neglecting, refusing or unable to carry out the duties of the guardian;
 - Reasonable efforts have been made to provide services to the parent(s) for reunification with the child;
 - Further reunification efforts are unlikely to be made by the parent(s) or are not in the best interest of the child(ren); and
 - The proposed guardian is willing and able to serve as the child's guardian until the child reaches the age of 18.
1. If the open CHIPS case meets the requirements (bullet points, above), the ongoing Case Manager (CM) must gather the following supporting information:
 - a. [Guardianship Screening Form \(DCF-5695-E\)](#)
 - b. [The Relative Caregiver Licensing Decision \(RCLD\) form \(DCF-F-2479-E\)](#), if applicable. This is not required if:
 - (1) The caregiver is licensed;
 - (2) The child(ren) is receiving an SSI payment (not SSDI);
 - (3) The provider took placement of the child after January 1, 2010, and is not licensed, or meets licensing standards and refuses to be licensed;
 - c. [Declaration of Paternal Interest \(DCF-F-CFS0019A-E\)](#)
 2. When possible, all siblings with a transfer of guardianship permanency plan will have their guardianship request submitted concurrently. When not possible, guardianship paperwork will include a memo to the District Attorney's office explaining why the siblings cannot be processed together.
 3. Once the necessary information is gathered, the CM will complete the Court Report for Transfer of Legal Guardianship. This report must include specific information about the mother and father of the child(ren) including:

- a. Address: if a mother or father's name is identified but no current contact information is available, the court report and case notes in eWiSACWIS must thoroughly describe the efforts made to locate that contact information including the results of those attempts.
 - b. The father's legal status (alleged, adjudicated, presumed, paternity testing completed or voluntary paternity acknowledgement form signed).
 - c. As to an "unknown father," the court report and eWiSACWIS case notes should describe efforts made to try to determine the father's identity, the responses that were provided by the mother as to identity and location, and any follow-up conducted by the IAS or CM to identify the name and address of the father and the results of those attempts.
 - d. Facts that support a guardianship transfer, rather than adoption;
 - e. The reason(s) the parent(s) is unlikely or unwilling, now or in the near future, to perform parental responsibilities; and
 - f. An explanation of services that should be continued and/or discontinued, including subsidized guardianship.
4. The CM or agency designee will submit the completed Court Report for Transfer of Legal Guardianship and supporting documentation to his/her Supervisor for approval.
 5. Once approved, the Court Report for Transfer of Legal Guardianship and supporting documentation is sent by email to the permanency paralegal and the Assistant District Attorney's (ADA) office (childwelfare.milwreferrals@da.wi.gov)
 6. The CM will attend all court hearings and will testify as needed.
 7. The court procedures for Transfer of Guardianship issues are detailed in [§48.977\(4\) Wis. Stats.](#)
 8. Once guardianship is ordered, the CHIPS petition will be dismissed in most cases ([§48.977\(3r\)](#)). In a few rare circumstances, the court will order the CHIPS remain open to continue services.
 9. **Documentation:** The filing of the [Guardianship Petition](#) and the results of all court hearings are documented in the child(ren)'s eWiSACWIS Legal Records window and case narrative. All hard copies of court documents will be scanned into eWiSACWIS within 3 business days. A case note must be created explaining what occurred at the court hearing.

Subsidized Guardianships

Under [§48.977 \(2\)](#), an agency may provide monthly subsidized guardianship payments to the guardian of child. The subsidized guardianship agreement must be submitted with all of the supporting materials for the transfer of guardianship petition.

Eligibility requirements for the child(ren) and guardian are detailed in [§48.623\(1\)](#). To apply for subsidized guardianship payments, the agency must mail a subsidized guardianship agreement, under [§48.623\(2\)](#), between DMCPs and the proposed guardian to the Department of Children and Families (DCF). DCF must send the proposed guardian a copy of the subsidized agreement. The agency must also mail the following forms to DCF:

- [Guardianship Screening Form](#) (DCF-F-2695-E)
- Foster Care Rate Review and Algorithm
- Subsidized Guardianship Eligibility Determination and Permanency Plan Addendum
- **Two** copies of [Subsidized Guardianship Agreement](#) (DCF-F-CFS2365-E)
- [Declaration of Paternal Interest](#) (only if there is NOT an adjudicated father)
- Like-kin email approval from a designated DMCPSP Program and Policy Analyst (PPA) noting the standards of like-kin are met, if applicable.
- [Permanency Options in Brief](#)
- Badgercare Plus / Medicaid Health Insurance Information
- Siblings Memo, if applicable

Once submitted to the DCF, the agency will be notified of the approved or denied request within three weeks of receipt. If approved by DCF, DCF emails the packet (containing the forms noted above) and court documents (court report, ADA screening form, and ADA acknowledgement form) back to the agency. Then the agency submits court documents and packet to the Permanency Paralegal at Children’s Court as part of the transfer of guardianship petition. Children’s Court reviews the petition and if it is legally sufficient the petition is filed and court date is assigned. If the court approves the petition and subsidized guardianship, DCF then administers payments under [§48.623\(3\)](#).

Applications for subsidized guardianship that are denied or are not acted on promptly may appeal decision as described in [§48.623\(5\)](#). Should the guardian receiving payments resign, be removed, deemed incapable or die, the payments would be made to an interim caretaker for up to twelve months if the conditions detailed in [48.623\(6\)](#) are met.

Should the subsidized guardianship agreement need to be modified, due to a substantial change in circumstances, the [subsidized guardianship amendment request form](#) should be completed and submitted. DCF shall review the placement of the child annually (no less than every twelve months) to determine ensure the child and guardian remain eligible under [§48.623\(4\)](#).

Revision of a Legal Guardianship Order under Chapter 48.977

Under [§48.977\(6\)](#), a revision request shall contain facts demonstrating a substantial change in circumstances since the last guardianship order and must be in the best interest of the child(ren). The request may be filed by a non-parent, including a DMCPSP, ongoing agency, the child’s GAL (Guardian ad Litem), the child’s legal guardian, or District Attorney ([§48.977\(4\)\(a\)](#)), and must contain information noted under [§48.977\(4\)\(a\)](#). Should the IAS or CM wish to file the request, a DMCPSP Attorney must be consulted. If a person, who is not the legal guardian, is seeking to revise a guardianship order and obtain guardianship, they are not authorized to file a revision of guardianship independently. An IAS, CM, or authorized person noted above may file a revision on their behalf.

A revision of guardianship should be pursued, if the present legal guardian is unable or refuses to fulfill his/her duties as guardian or wishes to modify the guardianship agreement,

and the parent is not able or willing to be guardian. There are four circumstances under which the Court will consider a revision of guardianship:

1. Resignation: a guardian may resign at any time if the resignation is accepted by the Court. The Court must accept the resignation prior to appointing a successor guardian; if no successor is immediately available, the Court may, at its discretion, appoint Department of Children and Families (DCF) DMCPDS as the successor guardian.
 - (a) Milwaukee Children's Court will call in a referral to DMCPDS Access when a revision of guardianship is filed involving a resignation. The legal guardian may also call DMCPDS Access requesting help to resign as the legal guardian. This referral or request will be screened in at Access as CPS report or Service report in accordance with Wisconsin State Standards.
2. Removal for Cause: IAS, CM, GAL, attorney, legal custodian or guardian, or another authorized persons (under [§48.977\(4\)\(a\)](#)) may request a revision of the guardianship order if the facts clearly demonstrate the guardian is abusing or neglecting the child(ren) in his/her care, or unable to discharge his/her duties as guardian. DMCPDS and ongoing contracted agencies responsibilities and involvement in this type of revision of guardianship are noted below:
 - (a) If Access receives a referral containing an allegation of child abuse and neglect (CAN) and a guardianship home study request from the person seeking guardianship who is not the legal guardian or parent, the CAN referral should be assessed first before a home study is conducted.
 - (b) A home study request to DMCPDS will only be fulfilled immediately if the request is from Milwaukee County Children's Court contact or the initial assessment on a CAN allegation has been completed, and a home study is necessary to complete the revision of guardianship order. The home study results must be faxed (454-4411) or emailed to the Permanency Counselor through Milwaukee Children's Court.
 - (c) If the caller is seeking help filing for guardianship and alleges CAN and Access screens the report in, the report would be a CPS report. If CAN case is already open with an IAS or CM and the caller - who is not the parent or legal guardian - is seeking help filing a Chapter 48 guardianship, Access would refer the caller to the assigned IAS or CM.
 - (d) If a home study is conducted or an initial assessment has been completed and finds the child's legal guardian is unsafe, the assigned IAS must actively manage safety in accordance with Access and IA Standards.
 - (e) The Court will provide a notice of the hearing to the IAS/CM (and all other parties to the original CHIPS disposition) at least seven days prior to the hearing; the IAS/CM will attend and testify as needed.
3. If the guardian dies or becomes incapacitated, DMCPDS should be notified by calling 414-220-SAFE. DMCPDS serves as the successor guardian if no successor is immediately available, or if a successor guardian is not named in the subsidized guardianship agreement in accordance with [§48.977\(5\)\(m\)\(a\)](#).
 - (a) Guardianship is not automatically reinstated to the biological parents.

- (b) A petition may be filed by IAS or CM for the appointment of a prospective successor guardian under [§48.977\(5\)\(m\)](#) at the time of the guardianship order.
 - (c) A separate petition is not required if successor guardianship named in subsidized guardianship agreement.
4. If the court appointed co-guardians and one of the current legal guardians wishes to revise guardianship to remove the other co-guardian (often due to a divorce), then these requests should be referred to DMCPs Attorneys to discuss filing a revision of guardianship petition. Likewise, if a guardian subsequently marries and desires the spouse become a co-guardian, then these requests should be referred to the DMCPs attorney to discuss filing a revision of guardianship petition.

Documentation: The revision of guardianship as well as results of all court hearings are to be documented by the primary assigned worker (IAS or CM) in the child(ren)'s eWiSACWIS Legal Records window and case narrative. All hard copies of court documents will be scanned into eWiSACWIS within 3 business days.

Termination of a Legal Guardianship Order under Chapter 48.977

The parent(s) of the child(ren) may request that the existing guardianship order be terminated. A termination of guardianship is informally referred to as a *reversal*. The request must detail a substantial change in circumstances since the last order was affected to demonstrate that the parent is willing and able to carry out the duties of a guardian and that the proposed termination would be in the best interest of the child. If a termination of guardianship is granted, the parent will be reinstated as the legal guardian.

The process for assisting a parent interested in resuming care of his/her child varies based on whether a CHIPS case is or is not open on the legal guardian.

- If a CHIPS case is open on the guardian or parent, DMCPs Access will direct the parent to contact the ongoing CM and their Attorney. Any assessment or home study that is needed will be completed by the assigned ongoing CM.
- If there is not an open CHIPS case, the parent will be referred to the DMCPs Access unit and the call will be screened in as a Service Report.

The next steps for pursuing a termination of legal guardianship petitions are as follows:

1. The assigned IAS/CM will review the case history with attention given to the circumstances under which the guardianship occurred, and shall speak with the guardian and/or the child(ren) to determine to what extent the parent has remained involved in the child(ren)'s life and, if age appropriate, the child's feelings with regard to the potential for reunification with his/her parent(s).
2. A home study is required by IAS/CM if the parent files to terminate an existing guardianship under [§48.977\(7\) Wis. Stats.](#)
 - a. If the parent(s) reside in Milwaukee County or any of its contiguous counties, IAS must conduct the home study and save the completed home study form in eWiSACWIS. If the parent(s) resides in a noncontiguous county or out-of-

- state, the IAS will attempt to arrange a home study to be conducted by another jurisdiction.
- b. The home study results must be faxed (454-4411) or emailed to the Permanency Counselor through Milwaukee Children's Court.
3. The assigned IAS or CM must confirm the Guardianship [Petition for Termination](#) is filed at court. Any party (IAS, CM, Attorney, or GAL) to the original CHIPS disposition may file the request with Milwaukee Children's Court.
 - a. After discussion with his/her Supervisor, the IAS/CM shall assist the parent(s) to file a pro se request or consult a DMCPs Attorney if the IAS/CM is considering filing.
 - b. IAS must email or call Milwaukee Children's Court Assistant Administrator at 257-5422 (Brian Neu) or Permanency Counselor (Sara Koefel) at 257-6907, and explain who they have referred (the parent's name), share the home study that indicates the parent is safe or unsafe via email or fax, and any other relevant information.
 - c. IAS must confirm whether or not the petition was filed by contacting Milwaukee Children's Court. If the home study conducted reveals the home is safe but the petition was not filed, IAS must continue to assist parent to file the petition.
 - d. If the parent decides not to file at any point in this process this should be documented in an eWiSACWIS case note.
 4. The Court will provide a notice of the hearing to the IAS or CM at least seven days prior to the hearing. The IAS/CM will attend and testify in Court as needed.

Documentation: The request to terminate an existing guardianship as well as results of all court hearings are to be documented by the primary assigned worker (IAS or CM) in the child(ren)'s eWiSACWIS Legal Records window. All hard copies of court documents will be scanned into eWiSACWIS within 3 business days.

Transfer and Terminations of Guardianship and Successor Guardians Under Chapter 54

A petition for guardianship of a minor under Chapter 54 may be filed by any person. The petition must include information noted in [§54.34\(1\)](#). The petitioner must provide a written notice with the copy of the petition, motion, and other requirement documents and provide notice to all interested persons. When the petition is submitted a hearing date is set at that same time by the Clerk of Courts; and the hearing date should be set roughly 30 days from submission. The court considers several factors to determine who the appointed guardian will be, according to [§54.15](#) Wis. Statutes.

The majority of guardianships filed under [Chapter 54](#) are non-CHIPS cases, which will not involve DMCPs. If the GAL, court or anyone else involved in filing a petition for guardianship learns there are safety issues, 220-SAFE will be contacted. In the event that a guardianship under Chapter 54 is ordered while CHIPS is open, Temporary Physical Custody (TPC) or CHIPS dispositional order should be closed. DMCPs only conducts a home study for a petition for guardianship under Chapter 54 if it is court ordered.

There are four scenarios when DMCPs may be involved with petitions for guardianship under [Chapter 54](#). The process associated with each scenario is outlined below:

1. When CHIPS is not present
 - a. Guardian ad litem (GAL) is appointed after the petition is filed. GAL will complete an investigation, including a home study, and make a recommendation to the court.
 - b. Court or GAL may request CPS records from DMCPs for non-CHIPS case. DMCPs does not conduct home studies for non-CHIPS cases, unless the home study is court ordered.
 - c. During court hearing, DMCPs may be subpoenaed and required to testify regarding historical or current DMCPs case information.
 - d. The Court will make a decision to dismiss the petition or appoint a guardian ([§54.46](#)).
2. When a CHIPS case is open and a placement for permanency has been established, but the placement is not licensed, then a petition for guardianship under [Chapter 54](#) should be filed by the person seeking guardianship, the GAL, or the parent's attorney with Milwaukee Children's Court. When the court hears the case, the CM will need to attend and provide testimony at the court hearing. DMCPs may be required to testify and share DMCPs case information.
3. If the guardian is filing a termination of guardianship and the parent(s) is unavailable or whereabouts are unknown, an Access report will be filed with DMCPs Access Unit. DMCPs will then complete an initial assessment or child welfare service report, and either provide services to enable the guardian to maintain placement or refer the matter to the DA's office for a CHIPS petition. Upon filing the CHIPS petition a GAL will be appointed. If the child is over 12 years old, a Public Defender will also be appointed.
4. If a CAN assessment is open and child is safe in the care of a person other than the parent or guardian; and if it is deemed that it is in child's best interest to have an official guardianship arrangement in place with that person (a non-parent or legal guardian), an order for guardianship under [Chapter 54](#) may be appropriate to control for safety in the home, rather than pursuing a CHIPS petition. IAS should consult an IA Supervisor and Program Manager to determine which option is appropriate.

If a petition for guardianship is pursued under Chapter 54, the following must occur:

- a. IAS must assist the caretaker to file the petition for guardianship themselves and direct the caretaker to meet with Milwaukee Children's Court.
- b. IAS must email or call Milwaukee Children's Court Assistant Administrator at 257-5422 (Brian Neu) or Permanency Counselor (Sara Koefel) at 257-6907. IAS should explain who they have referred (the caretakers name), share assessment information that indicates the caretaker is safe, and any other relevant information.
- c. IAS must confirm the petition was filed by contacting Milwaukee Children's Court Assistant Administrator or Permanency Counselor.

- d. The Court will provide a notice of the hearing to the IAS or CM at least seven days prior to the hearing; the IAS/CM will attend and testify as needed.
- e. The case may be closed if guardianship is granted to the caregiver; thereby confirming the child is safe. If guardianship is not granted by the court, the IAS should consult their IA Supervisor and control for safety.

Responsibilities:

OCMs, OCM Supervisors, DMCPs Legal Counsel, DMCPs Access Unit, IAS, IA Supervisors and Program Managers, GALs, and Milwaukee County Children’s Court

Related Resources:

[Children’s Code §48.977](#); [Chapter 54, Wisconsin Statutes](#); [Ongoing Standards: Transfer of Guardianship Criteria and Process and Eligibility for Subsidized Guardianship](#); [Pre-Placement Screening and Placement Plan for Potential Unlicensed Relatives](#);

Court Directives:

[Court Directive 15-02 Sharing BMCW Records with Staff Attorney Children’s for Purposes of Screening Chapter 54 Guardianships](#); [Court Directive 12-04 Sharing BMCW Records with Guardian ad Litem in Chapter 54 cases](#)

DCF Forms

- Court Report for Transfer of Legal Guardianship
- Declaration of Paternal Interest Form (DCF-F-CFS0019A-E)
- Declaration of Paternal Interest Revocation (DCF-F-CFS0019B-E)
- Guardianship Screening Form (DCF-F-2695-E)
- Relative Caregiver Licensing Decision (DCF-F-2479-E)
- Subsidized Guardianship Forms
 - Like-Kin Subsidized Guardianship Request (DCF-F-2694-F)
 - Subsidized Guardianship Agreement (DCF-F-CFS2365-E)
 - Subsidized Guardianship Amendment Request (DCF-F-2813-E)
 - Subsidized guardianship checklist/ Routing form (DCF-F-CFS2372)
 - Subsidized Guardianship (SG) Program Application and Decision (DCF-F-2848) *available in English, Hmong, and Spanish*

Wisconsin Circuit Court Forms

- Petition for Appointment of Guardian/Notice of Plea Hearing
- [Minor Guardianship Questionnaire](#)

Informational Resources

- [DMCPs Guardianship Access Screening Job Aid](#)
- [Milwaukee Children’s Court Guardianship Resources and Information](#)
- [DCF Subsidized Guardianship webpage](#)