



Guardianship in Wisconsin: A Guide for Parents of Children with Special Needs

Presented by



“Estate Planning... For What Means Most to You!”

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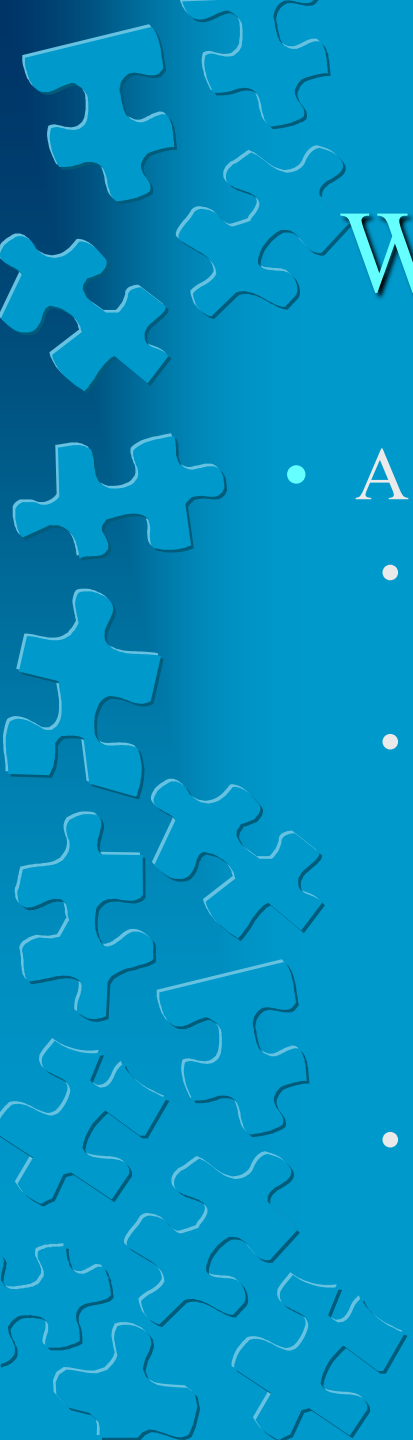
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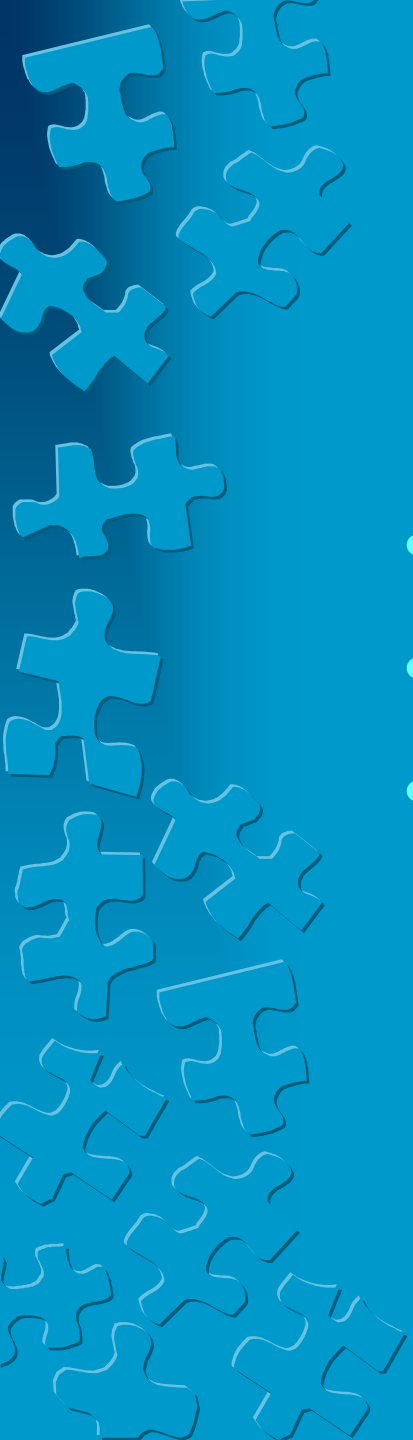
What is Guardianship?

- **A legal process through the court**
 - Appoints someone (guardian) to make decisions for another person (ward)
 - Typically considered when a person turns **18 and cannot make certain decisions independently**
- **Legal standard:**
 - Must be proven by **clear and convincing evidence**



When is Guardianship Needed?

- A court may appoint a guardian if:
 - Individual has an **impairment** (developmental disability, mental illness, etc.)
 - Cannot:
 - Make or communicate decisions
 - Meet essential needs (health/safety or finances)
 - AND no **less restrictive alternatives** are sufficient



Types of Guardianship in Wisconsin

- Guardian of the Person
- Guardian of the Estate
- Both (sometimes referred to as *plenary guardianship*)



Guardian of the Person

- **Focus:** Personal care and well-being
- Responsibilities include:
 - Medical decisions
 - Living arrangements
 - Services and supports
 - Daily care decisions



Duties of Guardian of the Person

- Ensure health and safety
- Arrange services and care
- Visit and monitor the individual
- File annual reports with the court
- Must:
 - Use the **least restrictive options**
 - Honor the person's **preferences whenever possible**



Guardian of the Estate

- **Focus:** Financial decisions
- Responsibilities include:
 - Managing money and assets
 - Paying bills
 - Protecting against exploitation
 - Managing benefits (SSI, SSDI, etc.)
 - Filing annual accounts with the court,
if required



When is a Guardian of the Estate Needed?

- A court may appoint one if the person:
- Cannot manage financial affairs
- Is at risk of:
 - Losing property
 - Financial exploitation
 - Inability to support themselves



Key Differences

Guardian of the Person

Health & daily life decisions

Living arrangements

Medical care

Services/supports

Guardian of the Estate

Financial decisions

Managing income/assets

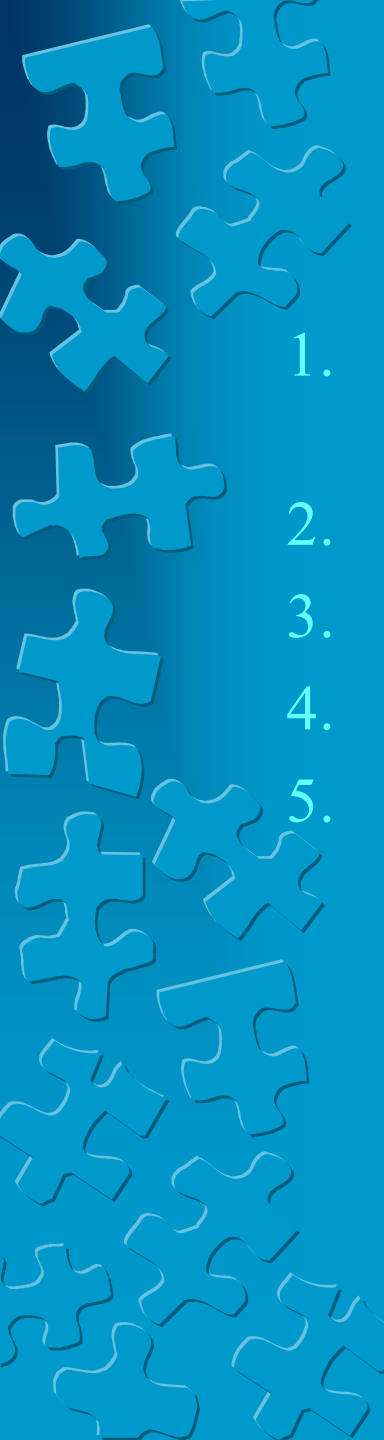
Paying bills

Preventing exploitation



Important Principle: Least Restrictive Means

- Courts must:
 - Limit guardianship to only what is necessary
 - Consider alternatives first
- **Legal requirement:**
Guardianship must be the **least restrictive option**



Guardianship Process in Wisconsin

1. Medical/psychological evaluation (*Examining Physician's or Psychologist's Report**)
2. File petition with court (personal service is required)
3. Guardian ad litem appointed
4. Court hearing
5. Judge decides
 - The individual has rights:
 - To attend
 - To have an attorney
 - To contest the guardianship

*This form can be found online: Search for *Wisconsin Circuit Court Form GN-3130*.



Rights of the Individual

- Even under guardianship:
 - Some rights may be retained
 - Court decides which rights transfer
- Guardians must:
 - Promote independence
 - Respect preferences and dignity



Alternatives to Guardianship

- Wisconsin strongly encourages alternatives first
- Examples:
 - Supported Decision-Making Agreements
 - Power of Attorney (health care/financial)
 - Representative payee
 - Case management/services



Supported Decision-Making

- Individual keeps decision-making rights
- Chooses trusted supporters
- Less restrictive than guardianship
- Recognized under Wisconsin law

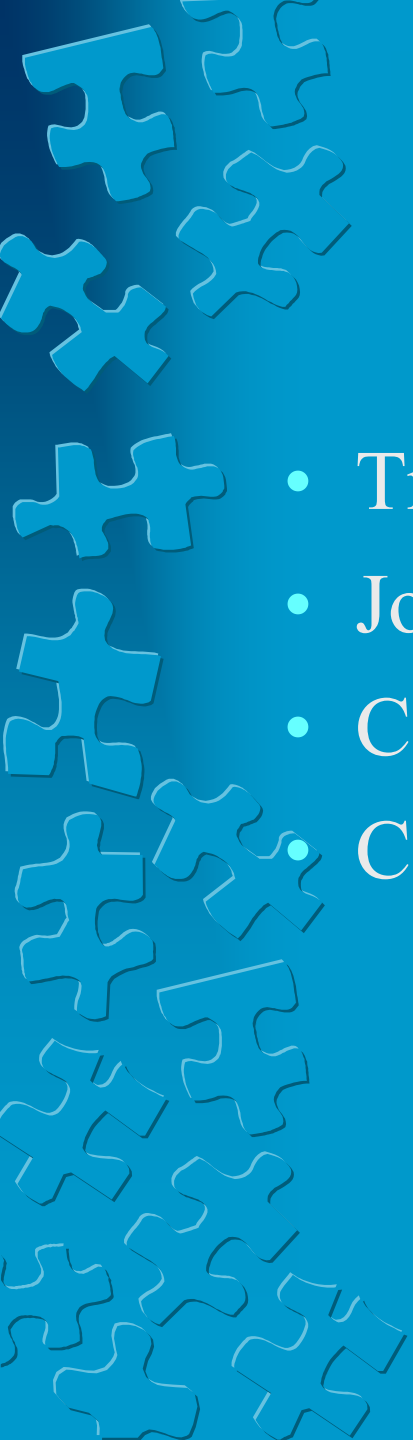
Link to Wisconsin's Supported Decision-Making Agreement form:

<https://www.dhs.wisconsin.gov/forms/f02377.pdf>



Power of Attorney

- Voluntary legal document
- Allows another person to assist with:
 - Health care decisions
 - Financial matters
- Only works if the individual:
 - Has capacity to sign



Other Alternatives

- Trusts (special needs trusts)
- Joint bank accounts (with caution)
- Community supports/services
- Case management programs



Limited vs. Full Guardianship

- **Limited guardianship:** Only specific decisions
- **Full (plenary):** Broad authority
- Courts prefer:
 - ➔ Limited guardianship whenever possible



Standby Guardianship

- Pre-planned backup guardian
- Takes effect if current guardian cannot serve



Key Takeaways

- Guardianship is a **serious legal step**
- Must be **necessary and least restrictive**
- Two main types:
 - Person (care decisions)
 - Estate (financial decisions)
- Alternatives should always be considered first

Current Decision-Making Support Tools



Release forms

Individual signs a release form authorizing a specific person access to certain information or records.



Supported Decision-Making Agreement

Individual makes all their own decisions. They identify a supporter/s to assist them.



Representative Payee

Social Security Administration appoints an individual/org. to receive SSI/SSDI benefits for a person who cannot manage their own benefits.



Power of Attorney, (medical or financial)

Formal legal arrangements that permit others to act on the individual's behalf.



Limited or Full Guardianship

Transfers some or all decision-making authority from the individual to a court-appointed Guardian.

Less limiting

More limiting

Source: BPDD Supported Decision-Making Toolkit



Resources

- Wisconsin Statutes Chapter 54
- Department of Health Services (DHS)
- Aging and Disability Resource Center (ADRC)
- Wisconsin Board for People with Developmental Disabilities (BPDD)
- Local attorneys specializing in special needs planning

Questions?

