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Chapter DHS 85

NON-PROFIT CORPORATION AS GUARDIAN

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Note: This chapter replaced ch. PW 65. Chapter HSS 85 was renumbered chapter HFS 85 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 2000, No. 530. **Chapter HFS 85 was renumbered chapter DHS 85 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 85.01 Purpose and authority. This chapter establishes criteria by which the department determines that an applicant non-profit corporation is a suitable agency qualified to serve as guardian of the person or the property, or of both person and property, of an adult found by a court to be mentally incompetent and therefore in need of a guardian. This chapter is promulgated pursuant to ss. 54.15 (7) and 55.02, Stats., which direct the department to make rules for this purpose.

Note: "Department" referred to in this chapter, refers to the department of health services.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 85.02 Definitions. As used in this chapter:

(1) "Class A corporation" means a non-profit corporation which is authorized by the department to assume full or limited permanent guardianship for no more than 20 persons at one time.

(2) "Class B corporation" means a nonprofit corporation which is authorized by the department to assume full or limited permanent guardianship for no more than 2 persons at one time.

(3) "Guardian" means a nonprofit corporation appointed by a court to advocate for an adult who is incompetent and who is further charged with the responsibility and authorized to make decisions regarding either the care, custody and control of the person of the incompetent or for management of the incompetent's estate, or both.

(4) "Incompetent" means a person determined by a court to be substantially incapable of managing his or her property or caring for self by reason of infirmities of aging, a developmental disability or a similar incapacity. A physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Limited permanent guardianship" has the meaning prescribed in s. 880.33 (3), Stats.

Note: Section 880.33 (3), Stats., was repealed by 2005 Wis. Act 387.

(6) "Nonprofit corporation" has the meaning prescribed in s. 181.0103 (17), Stats., namely, a corporation, no part of the income of which is distributed to its members, directors or officers, and includes a religious society organized under ch. 187, Stats., and a fraternal society organized under ch. 188, Stats.

(7) "Standby guardianship" has the meaning prescribed in s. 54.52, Stats.

(8) "Temporary guardianship" has the meaning prescribed in s. 54.50, Stats.

(9) "Ward" means an incompetent adult for whom a court has appointed a guardian.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; **corrections in (5), (7) and (8) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 85.03 Criteria for suitability. Criteria by which the department finds a non-profit corporation suitable to serve as guardian of persons found by a court to be incompetent are the following:

(1) The proposed guardian shall be organized as a private non-profit corporation under ch. 181, 187 or 188, Stats.

(2) The proposed guardian corporation shall provide evidence that it is reasonable to believe that it will continue in existence indefinitely.

(3) When serving as guardian, a corporation shall not be a provider of protective services or protective placement for its ward, pursuant to s. 55.03, Stats. Conversely, a corporation providing protective services or protective placement for a person shall not be appointed guardian of that person.

(4) No corporation may accept guardianships from a court in a county in which a member of the corporation's board of directors or any professional full-time employee of the corporation is a member or employee of the community board organized under s. 46.23, 51.42 or 51.437, Stats., or a member of the county welfare board or employee of the county social service or welfare department.

(5) A waiver of the upper limit on guardianships for a class A corporation shall be considered by the department where special circumstances are shown to exist. Temporary and standby guardianships shall be in addition to the number of permanent guardianships permitted for both class A and class B corporations.

(6) The proposed Class A guardian corporation shall at all times have at least one full-time staff member who is qualified either by training or by experience to work with and help persons with the disability or disabilities of the ward or wards to be served, including knowledge of service needs and resources for meeting service needs.

(7) A person employed by or otherwise associated with the non-profit corporation shall be designated the agent of the corporation to administer the guardianship. Any change in the internal assignment of responsibility shall be communicated to the department, the local planning agency or interagency mechanism designated under s. 55.02, Stats., the ward and the court within 14 days following its effective date.

(8) The corporation serving as guardian shall have sufficient staff assigned to its guardianship program to enable each staff member to adequately carry out the responsibilities of a guardian.

(9) The corporation serving as guardian shall be immediately accessible by phone during normal working hours to the local planning agency or interagency mechanism designated under s. 55.02, Stats., and the person responsible on behalf of the corporation for administering the guardianship shall be readily accessible in person or by phone to the ward and to other persons concerned about the ward's well-being.

(10) A corporation serving as guardian shall agree in writing to submit such reports and answer such questions as the department shall require in monitoring corporate guardianships.

(11) A corporation serving as guardian of the person of a ward shall endeavor to secure necessary care, services and protective placement when appropriate for the ward, pursuant to s. 54.25 (1) (b), Stats.

(12) A corporation serving as guardian shall have periodic personal contact with the ward, at least once every 3 months, to ascertain the status of the ward, take necessary action to see that the ward receives needed services and to assure that the ward is

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well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Personal contact with a ward protectively placed under ch. 55, Stats., shall be onsite personal contact.

(13) A corporation serving as guardian of the person of a ward shall make an annual report on the condition of the ward to the court which ordered the guardianship and to the county agency designated under s. 55.02, Stats., as required by s. 54.25 (1) (a), Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; corrections in (11), 12 and (13) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 85.04 Withdrawal of approval. If at any time the department determines that a non-profit corporation which the department had found suitable to assume responsibility for guardianships no longer meets the criteria set out in s. DHS 85.03, the

department may withdraw its finding of suitability upon 30-day notice to the non-profit corporation or former non-profit corporation, the court or courts that assigned the corporation's guardianships, the ward, his or her family, other interested parties and the county agency designated under s. 55.02, Stats.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

DHS 85.05 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a corporation to serve as guardian may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats.

Note: To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; correction made under s. 13.93 (2m) (b) 6., Stats., Register, February, 2000, No. 530.