

WHAT IS A GUARDIAN OF THE PERSON?

A guardian of the person is an individual or corporation appointed by a probate court pursuant to Chapter 54 of the Wisconsin Statutes (Ch. 880 prior to December 1, 2006) to make decisions for another adult (called the ward) who the court has determined is incompetent. The guardian of the person has no authority over the ward's property or finances, unless he or she is also appointed as the ward's guardian of the estate.

WHAT IS THE AUTHORITY OF THE GUARDIAN OF THE PERSON?

The "Letters of Guardianship" issued to the guardian by the court state the scope of the guardian's authority. In many guardianships ordered prior to December 2006, the Letters will state "you are granted Letters of Guardianship with the powers and duties of a general guardian." In those cases, the guardian has a wide range of duties and powers, including the duty and power to make health care decisions on behalf of the ward.

For guardianships ordered on or after December 1, 2006, the specific *powers* of the guardian will be listed in the Letters; the *duties* are not listed but

nevertheless apply. If the guardian has been granted the power to make health care decisions on behalf of the ward, the guardian's authority to do so will be specifically mentioned in the Letters.

This publication applies to guardians of the person who have been appointed to make health care decisions on behalf of the ward.

DOES A GUARDIAN OF THE PERSON HAVE AUTHORITY TO ACCESS THE WARD'S HEALTH CARE AND TREATMENT RECORDS?

A guardian of the person appointed by a Wisconsin court to make health care decisions for a ward has the authority to review and receive copies of the ward's health care and treatment records.

Wisconsin law requires a guardian of the person to examine the ward's patient health care records and treatment records. Guardians of the person are also required to authorize re-release of health care and treatment records, attend and participate in facility staff meetings if the meeting includes a discussion of the ward's treatment and care, inquire into the risks and benefits of alternative treatments, and consult with providers of health care and social services in making all necessary treatment decisions. These duties of a guardian of the person are found in

section 54.25 (1) (b) of the Wisconsin Statutes but are not included in the Letters. This list of duties means that guardians of the person are legally authorized to review and obtain copies of their wards' health care and records.

Unfortunately, confusion has occurred about the guardian of the person's authority because of another statute which appears to contradict the above information. However, this other statute should not be interpreted to prohibit access.

Sec. 54.25 (2) (d) 2. f. of the statutes grants guardians of the person the power "to give informed consent to release of confidential records *other* than court, treatment, and patient health care records and to re-disclosure as appropriate." *This section is not intended to limit a guardian's access to treatment and health care records.* This section is intended to provide guardians with access to and authority over other confidential records, such as education records. The right to access treatment and patient health care records is included in the duties of a guardian of a person, as noted above, and is not limited by the above statute.

WHAT ABOUT HIPAA?

The federal law known as HIPAA (Health Insurance Portability and Accountability Act) requires disclosure of a ward's

health care and treatment records to the guardian of the person. Under HIPAA, a guardian of the person is considered a “personal representative” if he or she is authorized by state law to make health care decisions for the ward.¹ Once the guardian’s authority is verified by reading the court document titled “Letters of Guardianship” for guardianships appointed prior to December 1, 2006, or “Letters of Guardianship of the Person” for guardians appointed on or after December 1, 2006,² HIPAA requires providers to disclose health records to the guardian.³

There are a few limitations under HIPAA on release of records. A guardian has the right to see only records that are relevant to his or her authority as stated in the Letters.⁴ Also, if a health care provider believes a guardian is abusing the ward, the health care provider may refuse to treat the guardian as a personal representative, and may refuse to release health care and treatment records to the guardian.⁵ (The provider’s refusal to allow the guardian access to the ward’s records can be appealed.)

¹ 45 C.F.R. § 164.502(g)(2)

² 45 C.F.R. § 164.514(h)

³ 45 C.F.R. § 164.502(g)(2)

⁴ www.hhs.gov/hipaafaq/personal/221.html

⁵ 45 C.F.R. § 164.502(g)(5)

WHAT ABOUT WISCONSIN’S HEALTH CARE RECORDS LAW?

Wisconsin’s statute governing the release of health care records found in Chapter 146 also requires disclosure of a ward’s records to a guardian of the person.

WHO CAN A GUARDIAN OF THE PERSON CALL WITH QUESTIONS?

For any question about the authority of a guardian, contact the Wisconsin Guardianship Support Center at:

- 800-488-2596, ext. 314
- guardian@cwag.org

Resource publications for guardians are available at:

- www.cwag.org



GUARDIAN OF THE PERSON: Access to the Ward’s Health Care and Treatment Records

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