

 <p style="text-align: center;">DIVISION OF ADULT INSTITUTIONS</p> <p style="text-align: center;">POLICY AND PROCEDURES</p>	DAI Policy #: 300.00.27	Page 1 of 6
	Original Effective Date: 04/01/02	New Effective Date: 11/12/18
	Supersedes: 300.00.27	Dated: 02/25/13
	Administrator's Approval: Jim Schwochert, Administrator	
Required Posting or Restricted:		
<input checked="" type="checkbox"/> Inmate <input checked="" type="checkbox"/> All Staff <input type="checkbox"/> Restricted		
Chapter: 300 Administrative		
Subject: Medical Guardianship		

POLICY

The Division of Adult Institutions shall seek a court appointed guardian of person to make medical decisions for an inmate patient who lacks the mental capacity to make decisions regarding his/her health care. At times there may be a need for guardian of estate as well.

REFERENCES

Wisconsin Statutes s. 146.81(5) – Person Authorized by the Agent
Wisconsin Statutes s. 146.82(1) – Confidentiality of Patient HealthCare Records
Wisconsin Statutes Ch. 54 – Guardianships and Conservatorships
DAI Policy 500.00.01 – Declaration to Physician and Power of Attorney for Health Care, Initiating and Handling

DEFINITIONS, ACRONYMS, AND FORMS

Advance Directives – Legal documents completed by adults that explain the health care the person wants to receive if the person is unable or cannot or chooses not to make his or her own decisions. The three kinds of advance directives for our purposes are Power of Attorney for Health Care, Declaration to Physicians and Do Not Resuscitate.

BHS – Bureau of Health Services

DAI – Division of Adult Institutions

DOC – Department of Corrections

DNR – Do not Resuscitate

DOC-2806 Office of Legal Counsel Referral for a Temporary or Permanent Guardianship.

DOC-3A – Face Sheet – Intake and Investigation

Guardian – Person appointed by a court under Wisconsin Statutes s. 54.10 to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of a minor, an individual found incompetent or a spendthrift.

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Guardian of the Estate – A guardian appointed to comply with the duties specified in Wisconsin Statutes s. 54.19 and to exercise any of the powers specified in Wisconsin Statutes s. 54.20.

Guardian of the Person – A guardian appointed to comply with the duties specified in Wisconsin Statutes s. 54.25 (1) and to exercise any of the powers specified in Wisconsin Statutes s. 54.25 (2).

HSM – Health Services Manager

HSU – Health Services Unit

Incompetent – An individual who has been adjudicated by a court as meeting the requirements of Wisconsin Statutes s. 54.120(3)

GN-3130 - Examining Physician's or Psychologist's Report. Report can be obtained from the Wisconsin Circuit Court forms website.

Guardian ad Litem (GAL) – An attorney appointed by the court when a petition for appointment of a guardian is brought under Wisconsin Statutes s. 54.34(10) to carry out responsibilities, duties, etc. under Wisconsin Statutes s. 54.40. The GAL is an advocate for the best interest of the proposed ward or ward as to guardianship.

Notice – The court document used to notify participants in a court proceeding of the date, time and place of hearing.

OLC – Office of Legal Counsel (DOC)

Other like incapacities – Those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, degenerative brain disorder, developmental disability and serious and persistent mental illness producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

Petition for Guardianship/Protective Placement – The legal document used to initiate a temporary guardianship, permanent guardianship or both at the same time.

POC-0035 – Information Sheet for the Guardian of the Person under the Custody of the Department of Corrections

Proposed Ward – The person for whom has been identified as the need for a guardian

PSU – Psychological Services Unit

Ward – The person for whom a guardian has been appointed.

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PROCEDURE

I. General

- A. The DOC recognizes competent inmates retain the right to make decisions about their health care.
- B. Staff identifying changes in an inmate's cognitive abilities shall notify HSU.
- C. Health care staff shall be proactive and discuss Advance Directives with elderly inmate patients or inmate patients with life threatening illnesses before the inmate patient lacks the mental capacity to make decisions regarding his or her medical care and the capacity to execute an Advance Directive.

II. Identifying and Obtaining a Guardian

- A. The HSM/designee shall discuss patients with reported cognitive difficulties with members of multi-disciplinary team including the Physician, Psychologist, Psychiatrist and assigned Social Worker.
- B. When a decline in cognitive abilities is noted, the HSM/designee shall review the medical chart to determine whether the inmate patient has previously signed a Power of Attorney for Health Care that could be activated which could eliminate the need for a guardianship.
- C. A physician shall assess the patient to verify the presence of cognitive decline and to determine whether there are treatable medical causes for the decline.
- D. Prior to examining the person, the DOC physician or licensed psychologist shall inform the individual of his/her rights, which include:
 - 1. Things you say to me may be used to decide if you need a guardian.
 - 2. You have a right to refuse to participate in this evaluation, unless a court ordered you to participate.
 - 3. You have the right to refuse to speak to me.
 - 4. I am required to report to the Court even if you do not speak to me.
 - 5. What we discuss is not confidential and may be shared in Court.
- E. Initiating a referral for guardianship
 - 1. DOC physician or licensed psychologist shall personally examine the patient and complete the following documents:
 - a. GN-3130
 - b. DOC-2806 – complete top portion
 - 2. After the top portion of the DOC-2806 is complete, the DOC physician or licensed psychologist shall forward DOC-2806 to the assigned social worker.
 - 3. The assigned social worker shall complete sections I – IV of the DOC-2806 and forward to DOCDLBHSReferral@wisconsin.gov for BHS Director or BHS Medical Director for approval.
 - 4. The BHS Director or BHS Medical Director shall email the completed GN-3130 and DOC-2806 to DOCOLCOfficeManager@wisconsin.gov for OLC

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to determine the next steps for filing GN-3130 with a court to obtain a hearing date.

- F. The assigned social worker shall:
 1. Coordinate activities with field agent in contacting individuals for consideration as guardians.
 2. Make arrangements for the GAL to meet with proposed ward.

- G. The OLC shall:
 1. Initiate all legal matters related to the guardianship proceedings including initiating the Petition for Guardianship/Protective Placement.
 2. File as the attorney for the petitioner.
 3. Collaborate with HSM/designee and facility in securing the guardianship.
 4. Provide the proposed guardian with a POC-0035 to guide them in carrying out their duties and responsibilities.

- H. The Warden/designee shall:
 1. Serve as petitioner.
 2. Receive a copy of petition and notice of hearing as custodian of inmate patient.
 3. Receive documents to be served on inmate patient before and after the hearing. Service of documents on inmate patient includes the reading of the document to inmate patient.
 4. After service, complete an affidavit of service that the inmate patient has been served. Return the affidavit of service to the court and provide OLC with a copy.

III. Guardian Appointed

- A. After the hearing OLC shall provide HSU staff with the Letter of Guardianship to scan in the inmate patient's healthcare record.

- B. HSU staff shall:
 1. Enter a "court ordered treatment" order in healthcare record.
 2. Enter guardian information into PM conversation in Healthcare record.
 3. Ensure the guardian is involved in decision making for care needs of the inmate patient including obtaining consent as necessary for invasive procedures.
 4. Notify guardian of changes in health status, emergency/life-threatening situations and discuss actions to be taken.
 5. Ensure staff communicate to outside agencies a guardian is appointed and send copies of guardianship papers to outside agencies.
 6. Ensure all off-site medical consultation forms contain information that the inmate patient has a guardian and also includes the guardian contact information.

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C. The appointed guardian of the person has a right to access the ward's entire DOC Health Care Record and to verbal protected health information in order to make informed decisions.

Bureau of Health Services: _____ **Date Signed:** _____
 James Greer, Director

_____ **Date Signed:** _____
 Paul Bekx, Medical Director

_____ **Date Signed:** _____
 Mary Muse, Nursing Director

Administrator's Approval: _____ **Date Signed:** _____
 Jim Schwochert

DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES

Facility: Name		
Original Effective Date: 00/00/00	DAI Policy Number: 300.00.27	Page 6 of 6
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Chapter: 300 Administrative		
Subject: Medical Guardianship		
Will Implement <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
Warden's/Center Superintendent's Approval:		

REFERENCES

DEFINITIONS, ACRONYMS, AND FORMS

FACILITY PROCEDURE

I.

A.

B.

1.

2.

a.

b.

c.

3.

C.

II.

III.

RESPONSIBILITY

I. Staff

II. Inmate

III. Other