

What is guardianship?

Guardianship restricts or removes entirely the Person's civil rights to make their own decisions in some (limited guardianship) or all areas of decision-making (full guardianship). Authority to make decisions on the person's behalf is transferred to a court-appointed Guardian.

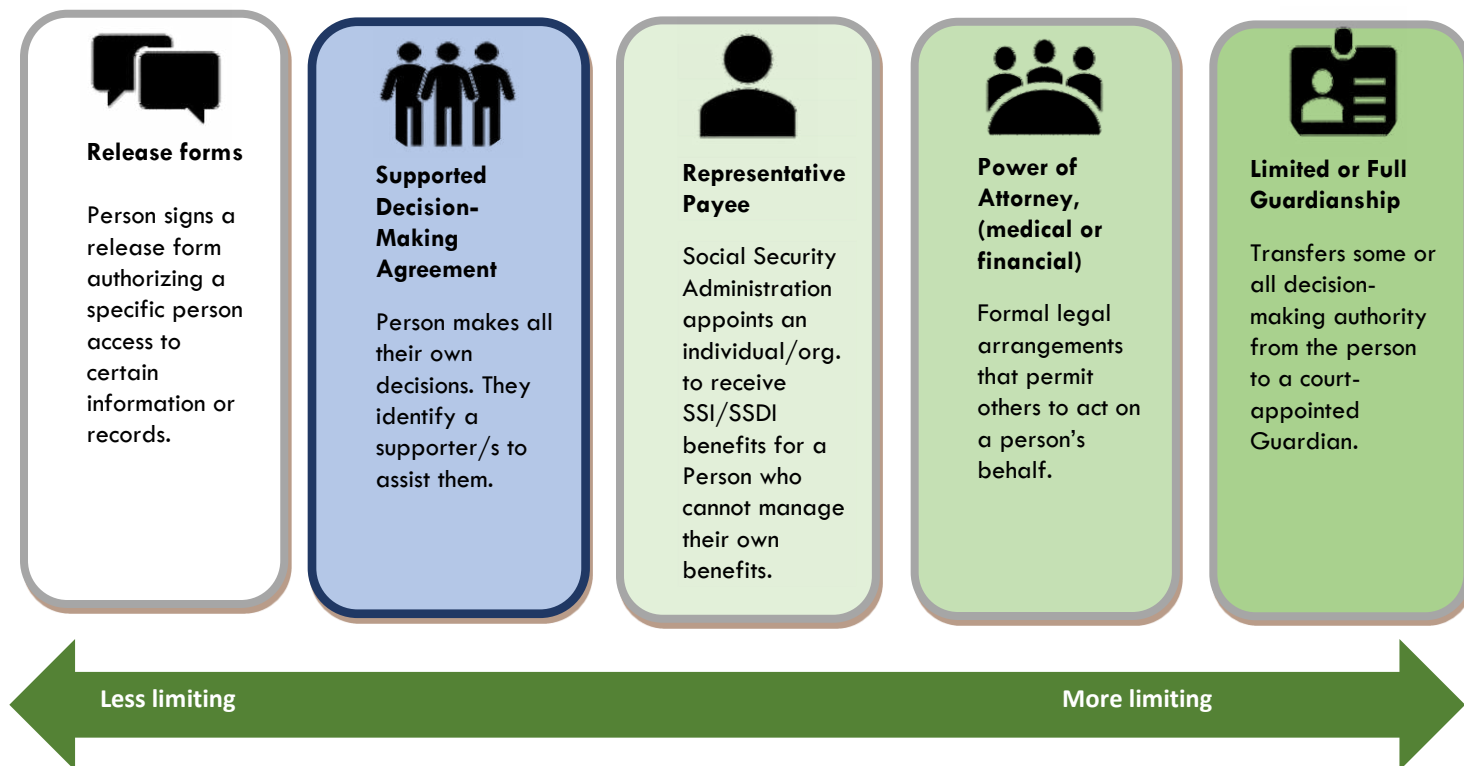
Adult guardianship is a serious intervention that transfers fundamental rights away from a person to a guardian. It usually lasts a lifetime. Once guardianship is granted by the court it is difficult (and costly) to modify or reverse the guardianship; any changes must be made through a formal court process.

Guardianship should be imposed only when absolutely necessary to protect the person from abuse, neglect or exploitation, and should preserve the person's rights and freedoms to the greatest degree possible.

Is guardianship the only option for families who have a loved one who needs help making decisions?

No. There are many options for individuals that want or need help with some or many decisions; many of them do not involve transferring the person's civil rights to make decisions to someone else.

Current decision-making support tools



Release forms require the person to grant formal permission to let another person see records, but the person doesn't lose their civil rights to make their own decisions. Supported Decision Making Agreements allow the person to identify the kind of decisions they want support with, a Supporter(s), and to define the role of the Supporter without giving up any of their decision-making authority.

Representative Payees and Powers of Attorneys (POA) do grant decision making authority to another person in certain circumstances but have a much narrower scope of authority than limited or full guardianship. Limited guardianship transfers the authority to make some decisions to another person (guardian), however the ward retains their autonomy and authority to make their own decisions in some areas of their life.

Why is training important for guardians?

Many family members who become a guardian do not fully understand what a guardian's role, responsibilities, and administrative duties are under Wisconsin law. Frequently guardians feel overwhelmed, unprepared, isolated, and unsupported.

Lack of training can result in guardians making decisions that are contrary to the spirit of Wisconsin's limited guardianship system¹, and in some cases imposing restrictions that go beyond what the court has authorized.

Nationally, the impact of guardianships on older adults and people with disabilities is a growing concern. Training for guardians and others on guardian responsibilities and related topics is a consistent recommendation to improve the well-being of people under guardianship and to ensure guardians are aware of their role and responsibilities.²

Why is having training before someone becomes a guardian important?

"You don't know what you don't know," as the saying goes. Many family members have misconceptions about what guardianship is or isn't, do not realize the roles/responsibilities/or administrative requirements that are expected, and have not considered how guardianship will impact planning and familial relations in the years to come.

Advance training may cause some families to realize that other options like Powers of Attorney or Supported Decision-Making agreements are a better fit for their proposed ward. This can preserve the person's rights and autonomy and avoid a court process.

Or if guardianship is the right option, the training may inform their choices about who is the best person to be the guardian or successor guardian, as well as the roles, responsibilities, and expectations of guardians required under the law.

Does Wisconsin have training requirements for guardians?

Wisconsin does not have training requirements or formalized training program for family or volunteer guardians.

The Department of Health Services (DHS) requires Corporate Guardians to have 20 hours of training every 24 months under Admin Code DHS 85.02.

Do other states have training requirements for guardians?

Yes. Twenty-one states require training for all guardians. Nine states, including Wisconsin, have training requirements only for Professional (Corporate) or Public guardians. Four states³ have developed web-based online training modules that fulfill statutorily required training.

Why is it important to require training?

The gravity of a judicial declaration of legal incompetency and resulting impact on an individual's civil liberties cannot be understated.

When a court appoints a guardian, the ward loses their civil rights to make decisions about some or most things in his or her life. The court entrusts the appointed guardian with the power to make decisions on behalf of the ward, which can include major decisions such as where they will live, whether and where they will work, what medical

¹ Under Wisconsin's limited guardianship system, the ward retains certain rights, and the guardian of the person is required to 1) place the least possible restriction on the ward's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the ward into his or her community. 2) make diligent efforts to identify and honor the ward's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. 3) take into account the ward's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity of the ward to develop decision-making skills, and the need of the ward for wider experience.

² *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*. U.S. Senate Special Committee on Aging. November 2018. <https://www.aging.senate.gov/hearings/ensuring-trust-strengthening-state-efforts-to-overhaul-the-guardianship-process-and-protect-older-americans>. *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*. National Council on Disability. June 2019. <https://ncd.gov/publications/2019/turning-rights-into-reality>

³ Alaska, South Dakota, Texas, and West Virginia

treatment they will get and, in rare cases, when they will die. The decision to appoint a guardian is not intended to be taken lightly.

Wis. Stats. Ch. 54 reflects the serious impact appointment of a guardian may have on an individual's life, freedom, and decision-making autonomy. Wisconsin guardianship law emphasizes placing the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights. The statutes direct the courts to authorize guardians to exercise only those powers necessary to provide for the individual's personal needs and property management and to do so in a way that is the least restrictive form of intervention and that honors the wishes and preferences of the individual. The statutes itemize rights that are always retained by a ward. When a guardian is appointed, they become responsible for carrying out the letter and spirit of the law. Guardians are mandated to act in accordance with the statutes. However, currently there is little support for guardians who take their roles seriously and want to ensure they are implementing the intent of the statute with fidelity. Guardian training helps family members and volunteer guardians understand what the law already requires of them when they are appointed; the bill also provides additional technical assistance and support for guardians once they are appointed.

How much training will be required?

The bill specifies seven training topics for a guardian of the person and two training topics specific to guardians of the estate.

While the bill does not specify a length for the training, the bill does require training to be in plain language, be available online for free, have modules that are topic specific, and use adult-learning principles.

Our collective experience conducting trainings with family member and volunteer audiences is the amount of time per topic may range from 5 to 20 minutes, with the goal to not exceed two hours total. This is consistent with the online training products available in other states. The intent of this legislation is to provide easy to understand information that helps ground and orient prospective guardians without becoming a barrier to the court petition process.

The bill includes funding to increase the capacity to provide technical assistance, in-person training, and support to guardians. Online access and availability of reliable internet connections varies across the state; the bill specifies paper copies are available for free upon request.

Will requiring training before someone is appointed a guardian cause more work for courts?

No. This bill would not cause the courts additional work or slow down the guardianship petition process. This bill adds completion of initial training requirements to the existing Statement of Acts declaration which is statutorily required to be submitted to the courts at least 96 hours before a guardianship petition hearing. This bill does not change that time frame. The Statement of Acts requires proposed guardians to provide the court with a sworn and notarized statement self-attesting whether specific items are true before the court holds a hearing on the appointment of a permanent guardian.

Will the training requirement reduce the number of people who want to be guardians?

The training requirement is not expected to negatively impact the number of family or volunteer guardians. The training requirement is not burdensome and the curriculum will be available, at no-cost to the participant, online or in print version if needed. If, after completing the training, a person decides that they are not able to fulfill the guardian responsibilities it is preferable to know that **before** being appointed.

What happens if a prospective guardian does not complete the training requirement?

Many family members and volunteers actively want information on the training topics outlined in the bill and want to do a good job as a guardian. We consistently hear confusion about the letter of the law as well as how guardians can best act in the spirit of the law.

The bill requires prospective guardians to self-attest they have completed the training on the existing Statement of Acts declaration that is already required as part of the guardian petition process. While it is possible for a prospective guardian to swear to the court that they have completed the training when they have not, our experience with people willing to serve as someone’s guardian is that the vast majority will welcome and complete the free training offered.

In the rare case a prospective guardian is unable to complete the training at least 96 hours before the guardianship petition hearing is scheduled, the hearing would be postponed until the prospective guardian can self-attest on the Statement of Acts that the training has been completed.

Courts already have enforcement authority and may review conduct of a guardian and apply remedies as they see fit.

Can training for guardians help others who work with families, older adults, and people with disabilities?

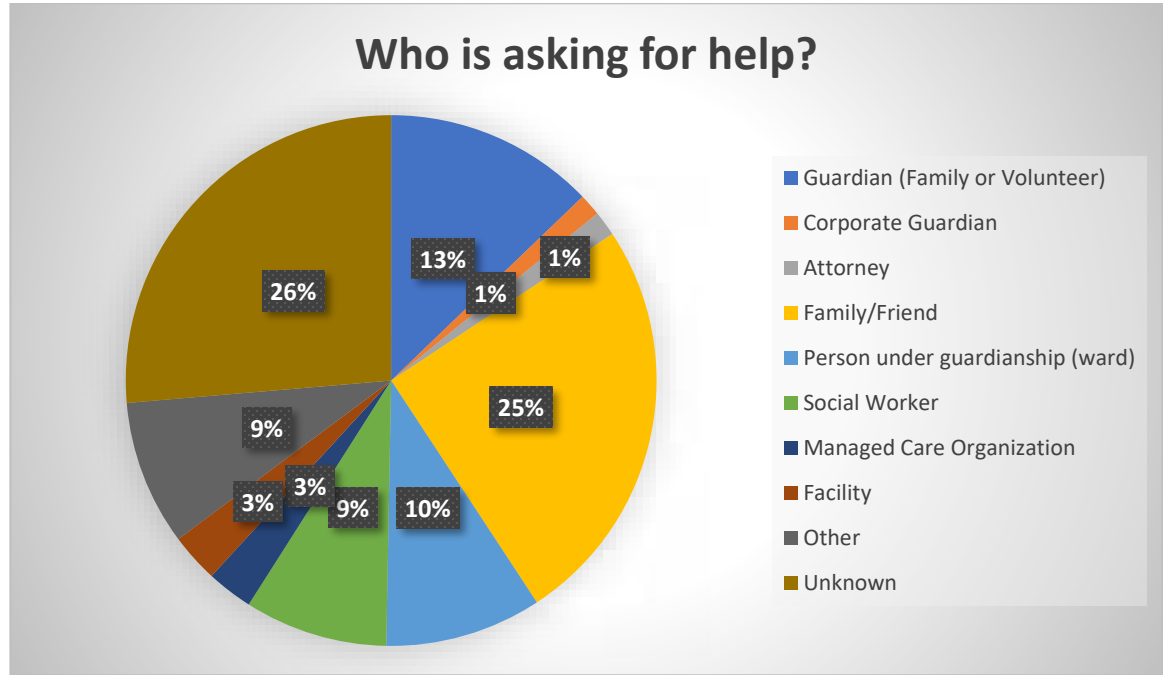
Yes. Plain language training is accessible to everyone and can be a resource for professionals—including teachers, medical staff, aging and disability resource center staff, direct service providers--looking to learn more, or to direct families to standardized and accurate information about guardianship and alternatives to guardianship.

How does this bill help existing guardians?

In addition to giving guardians a training resource they can reference at any time, the bill increases the grant—currently awarded to the Guardianship Support Center (GSC)—to increase the capacity of the GSC to serve guardians, professionals, persons under guardianship, family members and others with questions about guardianship through statewide technical assistance, in-person trainings, and a responsive helpline.

Who is asking for help?

Wisconsin’s Guardian Support Center (GSC) received contacts from 89% of Wisconsin counties last year, almost 1800 people from across the state. 24% of calls were from guardians or persons under guardianship, 25% were from concerned friends and family, and at least 16% were from professionals.



What are the common challenges and questions people have with guardianship?

Guardians, family members, and professionals have many reoccurring questions and concerns that could be addressed through better training and technical assistance.

Topics the Guardianship Support Center (GSC) has heard about frequently in the past year include:

- Prospective guardians with questions about petitioning for guardianship, alternatives to guardianship, and the differences between those alternatives (guardianships vs. Powers of Attorney, Supported Decision Making agreements etc.).
- Requests for resources for people/families considering guardianship
- Questions about guardian duties and authority as well as ward's rights.
- New guardians with general questions on things such as if the accounting is waived for the first year, guardian duties with accounting, gifting and reporting (what to include and when it is due).
- New guardians who needed help with how to do the inventory and what is included (what's an asset, how to record life estate, marital property, life insurance, and burial trusts) as well as how items are valued.
- Callers wanting information on standby and successor guardianships, how to add or become a standby guardian, wanting to remove a standby guardian or how to resign. There were also some callers looking to find successor guardians.
- Callers with concerns about the conduct of the current guardian, either exceeding their role and legal authority (ex. prohibiting visitation) or abusing the person under guardianship. Calls came from persons under guardianship as well as friends and family members of the person under guardianship.
- Callers requesting information about how to file complaints about guardians, requesting review of guardian conduct, asking for a new guardian, or terminating a guardianship.
- Complaints against Corporate guardians, callers seeing information to have greater oversight over a guardian's conduct or terminate a guardianship, due to things like abuse, visitation issues, the guardian being too restrictive, failure to adequately perform duties or violation of the ward's rights.