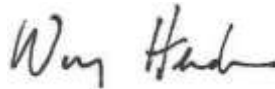


To: DCF/DMCPS Administrator
DCF Area Administrators
Child Placing Agency Directors
Child Welfare Agency Directors
County Departments of Community Programs Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Group Home Providers
Tribal Social Service/Indian Child Welfare Directors
Private Child Placing Agencies
Residential Care Center Providers
Shelter Care Providers
Tribal Chairpersons

From: Wendy Henderson
Administrator



Re: **Changes to Private Minor Guardianships**

PURPOSE

The purpose of this memo is to provide information regarding the changes to guardianship law specific to private minor guardianships and define the impact those changes will have on Department of Children and Families sponsored policies and programs.

BACKGROUND

Governor Tony Evers signed 2019 Wisconsin Act 109 into law on February 28, 2020. Effective August 1, 2020, all proceedings specific to private minor guardianships previously included in Chapter 54 are moved to Chapter 48. In moving Chapter 54 private minor guardianship proceedings to Chapter 48, 2019 Wisconsin Act 109 also expands available options for transfer of private minor guardianships within specific parameters.

INFORMATION SUMMARY

Chapter 54 Private Minor Guardianships – Summary of Statute Prior to 2019 Wisconsin Act 109

- All private minor guardianship proceedings occurred under Chapter 54, which governs all other private guardianships and conservatorships.
- In Chapter 54, private minor guardianships were split into two (2) types of guardianship, permanent and temporary.
- **Permanent guardianships** under Chapter 54 were ordered with no specific end date and terminated only upon certain events specified by statute and case law, but otherwise expired on the child's 18th birthday.
- **Temporary guardianships** under Chapter 54 could be ordered for up to sixty (60) days and could be extended for one additional sixty (60) day period to equal a maximum of 120 days.

Consolidation of Chapter 54 Private Minor Guardianships into Chapter 48

As of August 1, 2020, both public and private minor guardianships are all listed under Chapter 48.

- Public guardianships specific to CHIPS/JIPS proceedings remain under s. 48.977, Wis. Stats.
- Post- TPR guardianships remain under s. 48.427, Wis. Stats.
- Guardianships for an adoptability finding for children without a living parent remain under s. 48.831, Wis. Stats.
- The updated private minor guardianship proceedings are outlined in s. 48.9795 Wis. Stats.

Types of Private Minor Guardianships in s. 48.9795 Wis. Stats.

Four (4) types of guardianship are listed in s. 48.9795 Wis. Stats.

- **Full guardianships** under s. 48.9795(2)(d)1, transfer all the decision-making authority and duties to the child’s new guardian that other full guardians are provided under Ch. 48, absent any other type of order that may limit the guardian’s authority, such as a visitation order for the child. There is no requirement to set an expiration date for a full guardianship, and so, unless a lesser period of time is provided, it will continue until the child’s 18th birthday unless the child marries or a new order terminating the guardianship is issued.
- **Limited guardianships** under s. 48.9795(4)(h)2., Wis. Stats., transfer specific, limited duties and decision-making authority to the new guardian, and may allow the child’s parent to maintain certain duties and/or decision-making authority for the child. Under limited guardianships, the court must identify an expiration date of the guardianship but can decide to extend the limited guardianship with good cause.
- **Temporary guardianships** under s. 48.9795(5) Wis. Stats., allow for the transfer of specific, limited duties and decision-making authority when evidence suggests that the child’s parent will be unable to provide for the care, custody, and/or treatment of the child for a temporary period of time. Temporary guardianship can be ordered for up to 180 days, with the option to extend the temporary guardianship for an additional 180 days with good cause.
- **Emergency guardianships** under s. 48.9795(6) Wis. Stats., can be ordered for up to 60 days and provide limited decision-making authority to the guardian based on the specific need outlined in the petition and based on the emergency scenario.

Impact on Chapter 48 CHIPS/JIPS Public Guardianships

While private minor guardianships were transitioned from Chapter 54 into Chapter 48, the private guardianship provisions do not expressly impact or change the proceedings specific to public guardianships specific to CHIPS/JIPS proceedings under s. 48.977 Wis. Stats. Public guardianships specific to CHIPS/JIPS proceedings continue to require that the child has been adjudged to be in need of protection or services under specified grounds in order to petition for a transfer of guardianship.

In addition, the changes to private minor guardianships do not impact program eligibility requirements for the Voluntary Kinship Care, Long-Term Kinship Care, or Subsidized Guardianship. Guardians under Chapter 54 are transitioned to be s.48.9795 guardians and may continue to be eligible to receive Voluntary Kinship Care payments, as long as the other criteria for Kinship Care are met. Additionally, guardianships under Chapter 54 were not eligible for Subsidized Guardianship; as such, guardianships under the new s. 48.9795, Wis. Stats., will also be ineligible for Subsidized Guardianship.

CENTRAL OFFICE CONTACT:

Out-of-Home Care Section Manager
 Bureau of Permanence and Out-of-Home Care
 Out-of-Home Care Section
 (608) 422-6930

MEMO WEB SITE:

<https://dcf.wisconsin.gov/cwportal/policy>