



HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY AND ELDER WELFARE
SECTION 14 - ADULT GUARDIANSHIP AND SPENDTHRIFT
ORDINANCE

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1. Title. This ordinance shall be known as the "Adult Guardianship and Spendthrift Ordinance".

2. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

d. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

e. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

3. Jurisdiction. The tribal Trial Court shall have jurisdiction over all petitions for spendthrifts or guardianship over the person or estate of a member or person residing on or within Ho-Chunk Nation lands pursuant to Sec. 5 of this Ordinance. A guardianship of the estate, once granted, shall extend to all of a ward’s estate, wherever situated.

4. Definitions. As used in this ordinance:

a. “Activities of daily living” means activities relating to the performance of self-care, work, and leisure activities, including dressing, eating, personal cares (grooming), mobility, and object manipulation.

b. “Caretaker” means any of the following:

(1) A person who is required by Tribal law or custom or state law to provide care, services, or resources to an adult or elder;

(2) A person who voluntarily undertakes to provide care, services, or resources to an adult or elder;

(3) An institution or agency which voluntarily or is required by Tribal law or custom, state or federal law, or contract to provide care, services, or resources to an adult or elder;

(4) An employee of any institution or agency specified in paragraph (3), above.

c. “Decedent” means the deceased individual whose estate is subject to administration.

d. “Degenerative Brain Disorder” means a disorder creating conditions that result from progressive damage to cells and nervous system connections that are essential for mobility, coordination, strength, sensation, and cognition. Degenerative Brain Disorders, also referred to Neurodegenerative Disorders, include, but are not limited to: Dementia-Type Diseases (Alzheimer’s Disease, Frontotemporal Dementia, Lewy Body Dementia, Chronic Traumatic Encephalopathy), Ataxia, Huntington’s Disease, Parkinson’s Disease, Amyotrophic Lateral Sclerosis (Lou Gehrig’s Disease), Motor Neuron Disease, Multiple System Atrophy, Progressive Supranuclear Palsy, and Wernicke-Korsakoff Syndrome.

e. “Dependents” means a qualifying child or qualifying relative as defined in the Internal Revenue Code, 26 U.S.C. § 152, wherein the taxpayer provides over one-half of the qualifying individual’s support for the calendar year in which such taxable year begins;

f. “Developmental Disability” means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the appropriate medical personnel to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age twenty-two (22), which has continued or can be expected to continue indefinitely, and which constitutes a substantial functional limitation to the individual, namely substantially impairing the individual from adequately providing for their own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.

g. “Foreign Trial Court” means a Trial Court of a foreign state or tribe having competent jurisdiction of a foreign ward.

h. “Foreign guardian” means a guardian appointed by a foreign Trial Court for a foreign ward.

i. “Foreign guardianship” means a guardianship issued by a foreign Trial Court.

j. “Foreign ward” means an individual who has been found by a foreign Trial Court to be incompetent or a spendthrift and who is subject to a guardianship order or related order in a foreign state.

k. “Guardian” means a person appointed by the Trial Court to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of an individual found to be incompetent or a spendthrift.

l. “Guardian ad Litem” means a person appointed by the Trial Court to represent the best interests of the proposed ward.

m. “Guardian of the estate” means a guardian appointed to comply with the duties specified in this Act and to exercise the powers specified in this Act.

n. “Guardian of the person” means a guardian appointed to comply with the duties specified in this Act and to exercise the powers specified in this Act.

o. “Good Faith” means an honest belief or purpose and the lack of intent to defraud.

p. “Heir” means any person, including the surviving legal spouse, who is entitled under the statutes of interstate succession to an interest in the property of the decedent, unless otherwise defined by a subsequent tribal probate code of the Ho-Chunk Nation.

q. “Incapacity” means the inability of an individual effectively to receive and evaluate information or to make or communicate a decision with respect to the exercise of a right or power due to an impairment that is based upon medical, psychological, and other evidence.

r. “Impairment” means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities.

s. “Individual found incompetent” means an individual who has been adjudicated by the Trial Court as meeting the following requirements:

(1) The individual is aged at least 17 years and 6 months.

(2) For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for their physical health and safety.

(3) For purposes of appointment of a guardian of the estate, because of an impairment – not based upon poor judgement or physical disability – the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of their property or financial affairs, to the extent that any of the following applies:

(a) The individual has property that will be dissipated in whole or in part.

(b) The individual is unable to provide for their support.

(c) The individual is unable to prevent financial exploitation.

(4) The individual's need for assistance in decision making or communication is unable to be

met effectively and with the least restrictive means through appropriate and reasonably available training, education, support services, health care, assistive devices, supported decision-making, or other means that the individual will accept.

t. “Interested person”

(1) For purposes of a petition for guardianship, means any of the following:

- (a) The spouse or adult child of the proposed ward.
- (b) For a proposed ward who has no spouse, child, or parent, then an heir, as defined in this Ordinance, of the proposed ward that may be reasonably ascertained with due diligence.
- (c) Any individual who is nominated as guardian, any individual who is appointed to act as guardian or fiduciary for the proposed ward by the Trial Court of any state or tribe, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a power of attorney for health care as defined or any person appointed as agent under a power of attorney.
- (d) If the proposed ward is receiving moneys paid, or if moneys are payable by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.
- (e) If the proposed ward is receiving long-term support services or similar public benefits, the tribal and/or county department of human services or social services that is providing the services or benefits.
- (f) The attorney of the county in which the petition is filed and, if the petition is filed in a county other than the county of the proposed ward’s residence, the attorney of the county of the proposed ward’s residence.
- (g) Any other person required by the Trial Court.

(2) For purposes of proceedings subsequent to an order for guardianship, any of the following:

- (a) The guardian.
- (b) The spouse or adult child of the ward or the parent of a minor ward.
- (c) The county of venue, through the county’s attorney, if the county has an interest.
- (d) Any person appointed as an agent under a power of attorney as defined in this code.

unless the agency is revoked or terminated by the Trial Court.

(e) Any other individual that the Trial Court may require, including any fiduciary that the Trial Court may designate.

u. “Least Restrictive” means the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into their community that is consistent with meeting their essential requirements for health, safety, habilitation, treatment, and recovery and protecting them from abuse, exploitation, and neglect. This can include the use of appropriate and reasonably available training, education, support services, health care, assistive devices, supported decision-making, or other means that the individual will accept.

v. “Meet the essential requirements for physical health and safety” means perform those actions necessary to provide the health care, food, shelter, clothes, personal hygiene, and other care without which serious physical injury or illness would likely occur.

w. “Member” means an enrolled member of the Ho-Chunk Nation.

x. “Power of Attorney” means an original written document signed by an adult and notarized giving another person the power to act in conducting a person’s business in the name of the person. There are three main types of powers of attorney:

(1) A Power of Attorney for Finances and Property covers all the person’s business activities, for example signing papers, title documents, contracts, or bank accounts;

(a) A Limited Power of Attorney grants powers limited to specific matters, for example selling a particular piece of real estate or handling specific bank accounts;

(b) A Power of Attorney for Health Care grants powers to individuals to make health care decisions on an a person’s behalf should they become incapacitated.

y. “Property” means any interest, legal or equitable, in real estate or personal property, without distinction as to kind, including money, rights of a beneficiary under a contractual arrangement and anything that may be the subject of ownership.

z. “Proposed ward” means an individual alleged to be incompetent, or an alleged spendthrift, for whom a petition for guardianship is filed.

aa. “Self-Dealing” means engagement in a transaction that is intended primarily to benefit one's self or the narrow interests of a few rather than those to whom one owes a duty by virtue of one's position.

bb. “Serious and Persistent Mental Illness” means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long term

treatment and support, and that may be of lifelong duration which includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

cc. "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct, is unable to attend to business or thereby is likely to affect the health, life or property of themselves or others so as to endanger the support of themselves and their dependents or expose the public to responsibility for their support.

dd. "Standby guardian" means an individual, or tribe, named, including date of birth, by the Trial Court order whose appointment as guardian becomes effective immediately upon the death, resignation, or Trial Court's removal of the initially appointed guardian, or if the initially appointed guardian is temporarily or permanently unable, unavailable, unwilling or incapacitated, to fulfill their duties.

ee. "Successor guardian" means when/if a guardian dies, is removed by order of the Trial Court, or revokes and the self-revocation is accepted by the Trial Court, and no standby guardian was named, the Trial Court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as a successor guardian. The Trial Court may, upon request of any interested person or tribe on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

ff. "Supported decision-making" means a process of supporting and accommodating an adult with a functional impairment to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

gg. "Temporary Guardian of Adult" means a person, Tribe or institution who is assigned by a Trial Court of law as having the duty and authority to authorize and/or provide care for a person found to be incapacitated/incompetent for a specified amount of time as determined by the Trial Court. Temporary Guardianship of Adult is not a mandatory step in the pursuance of a petition for Permanent Guardianship of Adult.

hh. "Termination of Guardianship" means when a former incapacitated ward is found to be competent or the ward passes away.

ii. "Trial Court" means the Ho-Chunk Nation Trial Court.

jj. "Ward" means an individual for whom a guardian has been appointed by the Trial Court.

5. Persons and Estates Subject to Guardianship.

a. Jurisdiction.

(1) All enrolled Tribal Members who are incapacitated and found to be incompetent by a Trial Court of law, or spendthrifts, are subject to guardianship.

(2) The Trial Court may appoint a guardian of the person of anyone subject to guardianship who is residing on or within the Ho-Chunk Nation lands, under extraordinary circumstances, requiring medical aid or the prevention of harm to their person or property found on the Ho-Chunk Nation lands.

(3) The Trial Court may appoint a guardian of the estate of anyone subject to guardianship, whether on or within the Ho-Chunk Nation lands, if any of the estate is located on the Ho-Chunk Nation lands.

6. Petition. Any relative, Tribe, or other person may petition for the appointment of a guardian of a person and/or guardian of estate pursuant to the guardian preferences in Section 14. Such petition will include the following:

a. The name, date of birth, residence and post-office address of the proposed ward, and information showing that the proposed ward is a tribal member or resides on Ho-Chunk Nation lands.

b. The nature of the proposed ward's incapacity with specification of the incompetency or spendthrift habits.

c. The approximate value of the proposed ward's property, including real estate property, and a general description of its nature.

d. Any assets previously derived from or benefits now due and payable from the Veteran's administration.

e. Any other claim, income, compensation, pension, insurance, tribal per capita distributions or allowance –including General Welfare Exclusion Act funds – to which the proposed ward may be entitled.

f. The name and post-office address of any person nominated as guardian by the petitioner.

(1) The interest of the petitioner, and if a public official is the petitioner, the authority of the petitioner to act.

g. The name and post-office address of any person nominated as a stand-by guardian by the petitioner.

h. The names and post-office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be an interested person.

i. The name and post-office addresses of the caretaker or institution having the care and custody of the proposed ward.

j. Whether the proposed ward is a recipient of a public benefit, including medical assistance, SSI, SSDI, or long term community options program benefits.

k. The agent under any current, valid power of attorney for health care or power of attorney for finances and property that the proposed ward has executed.

l. Whether the petitioner is requesting a full or limited temporary guardianship. If limited, the specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.

m. Whether the proposed ward, if married, has children who are not children of the current marriage.

n. Whether the petitioner is aware of any guardianship or conservatorship or related pending or ordered proceeding involving the proposed ward in another state or county and, if so, the details of the guardianship, conservatorship, or related proceedings.

o. Specific nature of the proposed ward's alleged incapacity as defined in this Ordinance.

p. Whether other reliable resources are available to provide for the individual's personal needs or property management whether least restrictive means have been attempted, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision maker.

7. Temporary Guardians.

a. If, after consideration of a petition for temporary guardianship, the Trial Court finds that the welfare of a spendthrift or an alleged incompetent requires the immediate appointment of guardian of the person or of the estate, or of both, including the needs of the proposed ward's dependents, it may appoint a temporary guardian for a period not to exceed sixty (60) days. The Trial Court may extend the period at its discretion for one additional sixty (60) day period. Should additional time be required, a petition for permanent guardianship will be required.

b. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the law concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment.

c. Procedures for appointment. All of the following procedures apply to the appointment of a temporary guardian:

(1) Any person may petition for the appointment of a temporary guardian for an individual. The petition shall contain the information required under Section 6 and shall specify reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

(2) The court shall appoint a guardian ad litem, who shall attempt to meet with the proposed ward before the hearing or as soon as is practicable after the hearing, but not later than seven (7) calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing or not later than ten (10) calendar days after the hearing.

(3) The court shall hold a hearing on the temporary guardianship. The hearing may be held no earlier than forty-eight (48) hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the proposed ward is incompetent. The guardian ad litem shall attend the hearing in person or by electronic means or, instead, shall provide to the court a written report concerning the proposed ward for review at the hearing.

(4) If the court appoints a temporary guardian and if the ward, their counsel, the guardian ad litem, or an interested person requests, the court shall order a rehearing on the issue of appointment of the temporary guardian within ten (10) calendar days after the request. If a rehearing is requested, the temporary guardian may take no action to expend the ward's assets, pending a rehearing, without approval by the court.

(5) Every temporary guardian appointed under sub. (1) above, shall, under this provision, before entering upon the duties of their trust give bond to the judge in such sum and with such sureties the Trial Court designates and approves. Unless the court first specifically approves and orders bond, the temporary guardian may not sell real estate or expend an amount in excess of \$2,000.

(6) If the temporary guardianship is not sooner terminated, the duties and powers of the temporary guardian shall cease upon the expiration of the time period specified in sub. (1) above, or if the court sooner determines that any situation of the ward that was the cause of the temporary guardianship has terminated.

(7) During the pendency of the temporary guardianship, a temporary guardian of the person shall file with the Trial Court any report that the Trial Court requires. A temporary guardian of the estate shall, at the Trial Court's request, provide an initial inventory and accounting of the ward's estate.

(8) Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the Trial Court any report that the Trial Court requires. A temporary guardian of the estate shall, upon termination of duties and powers, provide an accounting to the Trial Court and deliver to the person or persons entitled to them all the estate of the ward in their hands.

(9) Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

8. Notice of Hearing. Upon the filing of a petition for guardianship, and the Trial Court being satisfied as to compliance with Section 7 if applicable, the Trial Court shall order notice of the

time and place of the hearing, including the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency, as follows:

a. In the case of incapacitated persons, a petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incapacitated person and existing guardian, if any, by personal service at least ten (10) calendar days before the time set for the hearing.

b. If such proposed incapacitated person is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed ward's custodian, who shall immediately serve it on the proposed ward.

(1) The custodian shall return the certificate and notice to the Trial Court judge upon receipt.

c. Such notice shall also be given personally or by mail at least ten (10) calendar days before the hearing to the proposed ward's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed ward whose names and addresses are known to the petitioner or can, with reasonable diligence, be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid, and to such other persons or entities as the Trial Court may require.

9. Hearing Procedures.

a. A hearing on the issues should be held no longer than forty (40) calendar days from the filing of the petition, provided no continuances have been granted.

b. The Trial Court shall cause the proposed ward, if able to attend, to be produced at the hearing. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the Trial Court shall permit electronic means to attend the hearing.

c. Before appointing a guardian under this Ordinance, declaring incompetence to exercise a right, the Trial Court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the Trial Court to make an informed decision respecting the individual's competency to exercise legal rights.

d. Hearings in guardianship cases shall be before the Trial Court and may be conducted in an informal manner. However, all parties will conduct themselves in a manner reflecting respectfulness to the Trial Court and other parties.

e. The general public shall be excluded and only such interested parties admitted as the Judge finds who has a direct relationship and legitimate interest in the case shall be allowed in the Trial Courtroom.

f. The proposed ward or their potential guardian may be separately interviewed at any time at the discretion of the Trial Court.

g. The hearing may be continued from time to time upon order of the Trial Court.

h. The Judge shall read the rights of the proposed ward:

(1) The proposed ward or ward has the right to counsel, if any of the following occurs:

(a) The proposed ward or ward requests counsel.

(b) The guardian ad litem or another person states to the Trial Court that the proposed ward or ward is opposed to the guardianship petition.

(c) If the Trial Court determines that the interests of justice require counsel for the proposed ward or ward.

(d) If the proposed ward or ward is unable to obtain legal counsel, the Trial Court shall appoint legal counsel.

i. The proposed ward or ward has the right to a trial by a jury if demanded by the proposed ward or ward, their attorney, except that the right is waived unless demanded in writing to the Trial Court at least forty-eight (48) hours before the time set for the hearing.

j. If requested by the proposed ward, ward, or anyone on the proposed ward's or ward's behalf, the proposed ward or ward has the right at their own expense, where the petition is heard on the merits, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this code, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

k. The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the Trial Court excuses the attendance of either or, for good cause shown, permits attendance by electronic means.

l. The Trial Court shall, in all cases, require the appointment of a guardian ad litem.

10. Appointment of Guardian. In appointing a guardian under this Ordinance, declaring incompetence to exercise a right, or determining what powers are appropriate for the guardian to exercise, the Trial Court shall consider all of the following:

a. Grounds for Incompetency. The Trial Court may appoint a guardian of the person or estate, or both, for an individual based on a finding that the individual is incompetent, only if the court finds by clear and convincing evidence all of the following are true:

(1) The individual is aged at least 17 years 6 months.

(2) For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for their physical health and safety.

(3) For purposes of appointment of a guardian of the estate, because of an impairment – not

based upon poor judgement or physical disability – the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of their property or financial affairs, to the extent that any of the following applies:

- (a) The individual has property that will be dissipated in whole or in part.
- (b) The individual is unable to provide for their support.
- (c) The individual is unable to prevent financial exploitation.

(4) The individual's need for assistance in decision making or communication is unable to be met effectively through other less restrictive means as addressed in sub. d. below.

b. Medical or Psychological Report.

(1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall examine the proposed ward and furnish a written report stating the physician's or psychologist's professional opinion regarding the following:

- (a) Whether the individual can adequately understand and appreciate the nature and consequences of their impairment(s).
- (b) Whether the individual has incapacity due to their impairment(s).
- (c) Whether the incapacity is likely to be permanent (unlikely to resolve with appropriate treatment).
- (d) The type of impairment(s) the individual has: developmental disability; degenerative brain disorder; serious and persistent mental illness; or other like incapacity.

1 Diagnosis for the impairment(s).

2 Whether the individual lacks evaluative capacity to make informed decisions regarding important life decisions.

3 Whether less restrictive means would eliminate the need for a guardianship for the individual.

4 Any physical illness of the individual and the prognosis of the individual.

5 Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

6 Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

(2) A copy of such report shall be provided to the proposed ward, guardian ad litem, and attorney. The original signed medical document will be provided to the Trial Court.

(3) The attorney and guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least five (5) calendar days in advance of the hearing.

(4) If requested, by the petitioner or guardian ad litem, the Trial Court may consider who has the right, at their expense to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this Ordinance, and to present a report of this independent examination or the physician's or psychologist's personal testimony as evidence at the hearing.

c. Guardian ad Litem Report. The written report of the guardian ad litem shall be required.

(1) Duties of Guardian ad Litem.

(a) Interview the proposed ward or ward.

(b) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the suitability of each individual interviewed to serve as guardian.

(c) Review any power of attorney for health care, any durable power of attorney executed by the proposed ward, and any other advance planning for financial and health care decision making in which the proposed ward had engaged.

(d) Request that the court order additional medical, psychological, or other evaluation, if necessary.

(e) If applicable, inform the court and petitioner's attorney or, if none, the petitioner that the proposed ward or ward objects to a finding of incompetency or the recommendation of the guardian ad litem as to the proposed ward's or ward's best interests or that the proposed ward's or ward's position on these matters is ambiguous.

(f) If the proposed ward or ward requests representation by counsel, inform the court and the petitioner or the petitioner's counsel, if any.

(g) Attend all court proceedings related to the guardianship.

(h) Present evidence concerning the best interests of the proposed ward or ward, if necessary.

(i) Report to the court on any matter that the court requests.

d. Exhaustion of Least Restrictive Alternatives. Whether any alternatives to guardianship have

been attempted, and, if applicable, the degree to which they have been attempted, the length of time they have been attempted, and whether they have been attempted in a manner sufficient to demonstrate that alternatives to guardianship are insufficient to enable the individual to adequately exercise the right or rights in question.

(1) The Court should consider whether the following least restrictive means were attempted or considered:

(a) Appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

(b) Informal supports, limited (and revocable) powers of attorney, health care proxies, trusts, and limited guardianships that are specifically tailored to the individual's capacities and needs.

(c) Whether a supported decision-making agreement was attempted, where the supporter accommodates and supports the individual to make life decisions, including decisions related to where the individual wants to live, the services, supports, and medical care the adult wants to receive, whom the individual wants to live with, and where the individual wants to work, without impeding the self-determination of the individual.

e. Other Evidence and Considerations.

(1) The preferences, desires, and values of the individual with regard to personal needs or property management.

(2) The nature and extent of the individual's care and treatment needs and property and financial affairs.

(3) The individual's understanding and appreciation of the nature and consequences of any inability they may have with regard to personal needs or property management.

(4) The individual's management of the activities of daily living.

(5) The extent of the demands placed on the individual by their personal needs and by the nature and extent of their property and financial affairs.

(6) Whether the individual's situation places them at risk of abuse, exploitation, neglect, or violation of rights.

(7) Other relevant evidence.

11. Spendthrifts

a. As to spendthrifts, notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing, but the proposed spendthrift may appear without objecting to the jurisdiction of the Trial Court over the proposed spendthrift's person and

thereupon the matter may be heard forthwith.

b. Notice of a rehearing to determine if a spendthrift is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

12. Nomination and Selection of Guardian. The Trial Court shall consider nominations made by any fit and willing person who has completed necessary guardianship training and, in its discretion, shall appoint a proper guardian. Prospective guardians shall pass relevant State Caregiver background checks, in addition to a criminal background check. Child and Family Services (“CFS”) will provide the Court assistance in acquiring background checks, even for independent guardianship petitions filed without CFS involvement. Consideration shall be given to the preferences noted in Section 14.

13. Guardianship Training.

a. Required Training Topics.

(1) Every guardian of the person shall complete training on all of the following topics:

(a) The duties and required responsibilities of a guardian under the law and limits of a guardian's decision-making authority.

(b) Alternatives to guardianship, including supported decision-making agreements and powers of attorney.

(c) Rights retained by a ward.

(d) Best practices for a guardian to solicit and understand the wishes and preferences of a ward, involving a ward in decision making, and taking a ward's wishes and preferences into account in decisions made by the guardian.

(e) Restoration of a ward's rights and the process for removal of guardianship.

(f) Future planning and identification of a potential standby or successor guardian.

(g) Resources and technical support for guardians.

(2) Every guardian of the estate shall complete training on all of the following topics:

(a) The duties and required responsibilities of a guardian under the law and limits of a guardian's decision-making authority.

(b) Inventory and accounting requirements.

b. Initial Training Requirements.

(1) Before the final hearing for a permanent guardianship, any person nominated for

appointment or seeking appointment as a guardian of the person is required to receive the training required under sub. a. (1).

(2) Before the final hearing for permanent guardianship, any person nominated for appointment or seeking appointment as a guardian of the estate is required to receive at least the training required under sub. a. (2).

c. The Trial Court, in conjunction with CFS, shall be responsible for selecting or creating the necessary training.

14. Guardian Preference Order. Whenever possible and appropriate, a Hoocak guardian shall be selected after exhausting the preference order below:

a. Fit and willing parents or step-parent.

b. Fit and willing Paternal Traditional Relatives, provided these relatives are Hoocak Tribal Members.

c. Fit and willing Maternal Traditional Relatives, with priority to the tega (maternal brother) and maternal grandparents, if the father is not a member of the Hoocak Nation, or is not known.

d. Another fit and willing Hoocak Tribal Member.

e. Another fit and willing American Indian guardian that is a relative of one of the ward's parents.

f. Any other family member which can provide a suitable home for wards of the Hoocak Nation.

g. Any other fit and willing individual within the community.

h. Corporate guardian, with priority given to Hoocak tribal members who are corporate guardians.

15. Decision and Order. The Trial Court shall, after a hearing, determine whether the person is a proper subject for guardianship and memorialize the determination in a written decision and order.

a. The Trial Court may provide an order granting temporary or permanent guardianship.

(1) In appointing a guardian under this subsection, the Trial Court shall authorize the guardian to exercise only those powers under this Ordinance that are necessary to provide for the ward's personal needs and property management and to exercise the powers in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(2) When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the Trial Court shall be issued to them.

b. Named Guardians.

- (1) Separate guardians of the person and of the estate of a ward may be appointed.
- (2) Co-guardians of the person and of the estate of a ward may be appointed.
- (3) While it may not always be practical, there are times where multiple guardians may be considered by the Court, particularly where there is evidence presented that a corporate guardian is necessary, but a familial guardian could additionally be necessary to assist with personal and financial decisions that may have cultural implications unknown to a corporate guardian.
- (4) Disputes between co-guardians may be resolved by the Trial Court through post-judgment motions.
- (5) Successor guardians of the person and of the estate may be appointed.

c. If the Trial Court finds any of the following, the Trial Court shall dismiss the petition:

(1) Contrary to the allegations of the petition, the proposed ward is not any of the following:

- (a) Incapacitated or incompetent.
- (b) A spendthrift.
- (c) A minor who is not aged at least 17 years 6 months.

1 Advance planning by the ward, when they were competent, may render a guardianship unnecessary.

2 The elements of the petition are unproven.

3 Specific to a petition regarding transfer of a foreign guardianship:

a The foreign guardian is not presently in good standing with the foreign Trial Court.

b The foreign guardian is moving or has moved the foreign ward or the property of the foreign ward from the foreign jurisdiction in order to avoid or circumvent the provisions of the foreign guardianship order.

c The transfer of the foreign guardianship from the foreign jurisdiction is not in the best interests of the foreign ward.

d. If the Trial Court appoints a guardian of the person, the Trial Court shall determine if, the proposed ward is prohibited from possessing a firearm. If the proposed ward is prohibited, the

Trial Court shall order the proposed ward not to possess a firearm, order the seizure of any firearm owned by the proposed ward.

(1) If under this code, the Trial Court orders a proposed ward not to possess a firearm, the proposed ward may petition the Trial Court to cancel the order.

(2) The Trial Court considering the petition under this code shall grant the petition if the Trial Court determines that the circumstances regarding the appointment of a guardian under this subsection and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

(3) If the Trial Court grants the petition under a above, the Trial Court shall cancel the order under 8(a) above and order the return of any firearm ordered seized.

16. Letters of Guardianship - Duties & Powers of Guardian.

a. Letters of Guardianship. The Trial Court shall issue Letters of Guardianship setting forth the guardian's powers and duties. Additionally, the Letters shall define, when appropriate, the retained authority and powers of the ward to care for themselves or to manage their financial resources commensurate with their ability to do so. The following sections are not an all-inclusive list of duties and powers and it will be in the discretion of Court whether a duty will need Court approval before it is exercised.

b. General Duties and Powers of a Guardian. A ward retains all their rights that are not assigned to the guardian or otherwise limited by this Ordinance. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by this Ordinance or court order. A guardian may be granted only those powers necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(1) A guardian shall do all of the following:

(a) Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in their own affairs.

(b) Advocate for the ward's best interests.

(c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.

(d) Notify the court of any change of address of the guardian or ward.

(e) Do all other things necessary for the protection of the ward.

(2) Whether in the custody of the guardian or in a hospital, institution or facility, the guardian will be responsible for ensuring for the ward's care, comfort, and maintenance needs, including ensuring food, clothing, shelter, health care, social and recreational requirements are being met,

also, when appropriate, provide the ward with training, education, and rehabilitation. The guardian has no duty to pay for these requirements out of their own funds. Whenever appropriate, the guardian has the duty to meet these requirements through governmental benefits or services to which the ward is entitled before accessing funding from the ward's estate.

(3) Take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection.

(4) Consent to or approve any necessary medical or other professional care, counseling, treatment or service for the ward.

(5) A guardian of a person, upon order of the Court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also appointed as the ward's guardian of the estate.

(6) A guardian of the person may admit the ward to a residential facility by order of the Court or make an emergency protective placement. The guardian of the person has the power to apply for placement of the ward within the state protective services law, or for commitment in state court under the state mental health law.

(7) In all cases the Court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right: to vote; marry; obtain a motor vehicle operator's license or other state license; and to testify in any judicial or administrative proceeding. Such rights may be conditioned on prior Court approval before being exercised by the guardian.

(8) Initiate or defend a civil suit on behalf of the ward.

(9) A guardian of the person or of the estate is immune from civil liability for their acts or omissions in performing the duties of the guardianship if they perform the duties in good faith, in the best interests of the ward, and with the degree of diligence and prudence that an ordinarily prudent person exercises in their own affairs.

(10) Access to a ward's Trust Fund shall be done so pursuant to the Ho-Chunk Nation's Per Capita Distribution Ordinance, 2 HCC § 12.

c. Duties of Guardian of the Estate. Except as specifically limited in the order of appointment, the guardian of the estate shall, do all of the following in order to provide a ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of their functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

(1) Take possession of the ward's real and personal property, of any rents, income, and benefits accruing from the property, and of any proceeds arising from the sale, mortgage, lease, or

exchange of the property, and prepare an inventory of these. Subject to this possession, the title of all the income and assets of the ward and the increment and proceeds of the income and assets of the ward remains vested in the ward and is not vested in the guardian.

(2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, benefits, and proceeds and account for all of them.

(3) No guardian shall lend guardianship funds to themselves.

(4) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the Tribal Court, and then only if the guardian is immediate family of the ward or is a cotenant with the ward in the property.

(5) Determine, if the ward has executed a will, the will's location, determine the appropriate persons to be notified in the event of the ward's death, and, if the death occurs, notify those persons.

(6) Use the ward's income and property to maintain and support the ward and any dependents of the ward.

(7) Prepare and file an annual account.

(8) At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.

(9) With respect to claims, pay the legally enforceable debts of the ward, including by filing tax returns and paying any taxes owed, from the ward's estate and income and assets.

(10) File, with the Realty Division of the Nation in which the ward possesses improvements on leased lands or of any county in which the ward possesses real property of which the guardian has actual knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(11) For a ward who receives governmental benefits for which a representative payee is appropriate, if no representative payee is appointed, apply to be appointed the ward's representative payee, or ensure that a representative payee is appointed.

(12) Perform any other duty required by the court order.

d. Powers of the Guardian of the Estate.

(1) Standard. In exercising the powers under this section, the guardian of the estate shall use

the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, including the permanent, rather than speculative, disposition of their funds and consideration of the probable income and safety of their capital. In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:

- (a) The ward's understanding of the harm that they are likely to suffer as the result of their inability to manage property and financial affairs.
- (b) The ward's personal preferences and desires with regard to managing their activities of daily living.
- (c) The least restrictive form of intervention for the ward.

(2) Powers requiring court approval. The guardian of the estate may do any of the following with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires:

- (a) Make gifts, under the terms, including the frequency, amount, and donees specified by the court in approval of a petition under this Ordinance.
- (b) Transfer assets of the ward to the trustee of any existing revocable living trust that the ward has created for themselves and any dependents, or, if the ward is a minor, to the trustee of any trust created for the exclusive benefit of the ward that distributes to themselves at age 18 or 21, or, if the ward dies before age 18 or 21, to their estate, or as the ward has appointed by a written instrument that is executed after the ward attains age 14.
- (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets into the trust.
- (d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.
- (e) Ascertain, establish, and exercise any rights available to the ward under a retirement plan or account.
- (f) Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent.
- (g) Release or disclaim, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.
- (h) If appointed for a married ward, exercise any management and control right over the marital property or property other than marital property and any right in the business affairs that the married ward could exercise under a relevant family law statute or ordinance if the ward were not an individual found incompetent, consent to act together in or join in any

transaction for which consent or joinder of both spouses is required, or execute a marital property agreement with the ward's spouse or, if appointed for a ward who intends to marry, with the ward's intended spouse, but may not make, amend or revoke a will.

(i) Provide support for an individual whom the ward is not legally obligated to support.

(j) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(k) The guardian of the Estate, with the Tribal Court's approval, may create or modify an Indian Will disposing of the ward's federally-held trust assets upon their passing.

(l) In all cases in which the court determines that it is advantageous to continue the business of a ward, continue the business on any terms and conditions specified in the order of the court.

(m) Access the ward's digital property.

(3) Powers that do not require court approval. The guardian of the estate may do any of the following on behalf of the ward without first receiving the court's approval:

(a) Provide support from the ward's income and assets for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract under sub. (2) or that is otherwise prohibited under this Ordinance.

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential financial records.

(e) Apply for public and private benefits.

(f) Retain any real or personal property that the ward possesses when the guardian is appointed or that the ward acquires by gift or inheritance during the guardian's appointment.

(g) Sell, mortgage, pledge, lease, or exchange any asset of the ward at fair market value.

1 Any real estate, or interest therein belonging to an individual adjudicated incompetent may be sold, mortgaged or leased:

a When the personal property and the income of the real estate of such individual adjudicated incompetent are together insufficient for the payment of their debts or for the maintenance and education of themselves and family;

b When the interests of such individual adjudicated incompetent require or will be substantially promoted by such disposition on account of such real estate or interest therein being exposed to waste or dilapidation, or being unproductive, or for other peculiar reasons or circumstances.

(h) Invest and reinvest the proceeds of sale of any assets of the ward and any of the ward's other moneys in the guardian's possession in accordance with sound fiduciary practices.

(i) After such notice as the court directs, invest the proceeds of sale of any assets of the ward and any of the ward's other moneys in the guardian's possession in the real or personal property that is determined by the court to be in the best interests of the estate of the ward.

(j) Settle all claims, debts, and accounts of the ward and appear for and represent the ward in all actions and proceedings except those for which another person is appointed.

1 The guardian or a creditor of any ward may apply to the Trial Court for adjustment of claims against the ward's estate incurred prior to entry of the petition for guardianship. The Trial Court shall by order, fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by at least 10 days' written notice.

2 The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due to them, or may, with the approval of the Trial Court, compound and discharge the same, and shall appear for and represent their ward in all actions and proceedings, except where another person is appointed for that purpose.

(k) Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

17. Bond. In any action or proceeding wherein funds are to be paid to a guardian of the estate, the Trial Court shall, prior to payment or approval, be satisfied as to the sufficiency of the sum of the guardian's bond.

a. Amount and sufficiency of bond. The order shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person.

b. Waiver of bond. Unless required under sub. c. below, the Trial Court may waive the requirement of a bond under any of the following circumstances:

(1) At any time.

(2) If so requested in a will in which a nomination appears.

(3) If a guardian has or will have possession of funds of the ward with a total value of \$40,000 or less and the court directs deposit of the funds in an insured account of a bank, credit union,

savings bank, or savings and loan association in the name of the guardian and the ward and payable only upon further order of the Trial Court.

c. United States Uniform Veterans Guardianship Act.

(1) Upon the appointment of a guardian, the guardian shall execute and file a bond to be approved by the Trial Court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship law. The Trial Court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least 2 such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all the surety's debts and liabilities and the aggregate of other bonds on which the surety is principal or surety and exclusive of property exempt from execution. The Trial Court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

d. If the Trial Court finds that the ward's estate has been harmed due to gross negligence of the guardian, the guardian's bond shall be forfeited. In the event no bond was issued, the Trial Court may hold the released guardian liable for the loss to the ward's estate.

18. Inventory.

a. When any guardian of the estate has been appointed, an inventory shall be completed and attested to by a notary of the ward's estate, including the ward's credit report. An appraisal of all or any part of the ward's estate and liabilities shall be made when ordered by the Trial Court.

b. Every guardian shall verify by their oath every inventory required of them and verification shall be to the effect that the inventory is true of all property which belongs to the estate of their ward, which has come to his possession or knowledge, and that upon diligent inquiry, he has not been able to discover any property belonging to the estate or ward which is not included therein. The Trial Court, at the request of any party interested, or on its own motion, may examine them under oath in relation thereto, or in relation to any supposed omission.

c. If any guardian neglects to file the inventory or accounting when required by law, the judge shall call the guardian's attention to the neglect. If the guardian still neglects their duty, the Trial Court shall order the guardian to file the inventory or accounting, and may additionally order any other suitable remedy available pursuant to Section 22.

19. Void Contract. A contract is deemed void that names the ward if a copy of the petition for guardianship and Trial Court order from the hearing are filed in the office of the register of deeds for the county, Ho-Chunk Nation Office of Tribal Enrollment, Ho-Chunk Nation Treasury Department, and Ho-Chunk Nation Realty Division; and if a guardian is appointed, upon such application, except for contracts related to necessities at reasonable prices, and all gifts, sales and transfers of property made by such incapacitated person or spendthrift.

20. Compensation From Estate.

a. Every guardian shall be allowed the amount of their reasonable expenses incurred in the execution of their responsibilities and trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. They shall also have such compensation for their services as the Trial Court, in which their accounts are settled, deems to be just and reasonable.

b. When a guardian is appointed, the Trial Court may allow reasonable expenses incurred by the ward in contesting the appointment.

21. Accounting.

a. Every guardian shall prior to April 15, or the closest business day, of each year file an account under oath and specify therein the amount of property received by them and remaining in their hands or invested by them, and the nature and manner of such investment, and their receipts and expenditures during the preceding calendar year and whenever ordered by the Trial Court, they shall, within 30 days, render and file a like account for any shorter term. In lieu of the filing of such accounts before April of each year, the Trial Court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file such annual accountings within 60 days after the anniversary date of the order appointing the guardian, with the accounting period from the anniversary date of appointment to the ensuing annual anniversary date. When any guardian has the custody of their ward and the care of the ward's education they shall state in their report the time their ward attended school (naming the school) during the time for which the account is rendered, and shall also report any change in the status of the surety upon their bond.

b. Upon rendering any such account the guardian shall produce for examination by the Trial Court, or some person satisfactory to the Trial Court, all securities, evidences of deposit and investments reported by them, which shall be described in such account in sufficient detail so that the same may be readily identified. It shall be ascertained whether such securities, evidences of deposit and investments correspond with the account. But such Trial Court may by a general or special order exempt any trust company bank, or any bank with trust powers, from the requirements of this Section, if such bank within 30 days after each examination by its proper supervisory banking authority files in such Trial Court a certificate of the examiner in charge, that at such examination the securities, evidences of deposits and investments of all trust accounts of such bank were examined and compared with the records of the several trusts and found to be correct. Notwithstanding any such order of exemption, the Trial Court may at any time require the guardian to produce all securities, evidences of debt and investments for examination as provided in this Section.

22. Authority of the Trial Court to Review Conduct of Guardian.

a. If the Trial Court receives a written complaint and determines that the guardian has neglected their duties, as appointed by the Trial Court, the Trial Court will provide CFS an order granting CFS permission to obtain, but not limited to, medical, financial, educational, and genealogical information, including family trees and traditional relatives lists, with the

exception of impounded orders of adoption from foreign Trial Courts, in order to conduct a thorough investigation.

b. Cause for Court Action Against a Guardian. Any of the following, if committed by a guardian with respect to a ward or the ward's income or assets, constitutes cause for a remedy of the court under sub. d.:

- (1) Failing to file timely an inventory or accounting, as required under this Ordinance, that is accurate and complete.
- (2) Committing fraud, waste, or mismanagement.
- (3) Abusing or neglecting the ward or knowingly permitting others to do so.
- (4) Knowingly isolating a ward from the ward's family members or violating a court order.
- (5) Engaging in self-dealing.
- (6) Failing to provide adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.
- (7) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.
- (8) Failing to act in the best interests of the ward.
- (9) Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.
- (10) Failing to disclose that the guardian is listed under any State's registry for failing to act under their professional duties as a health worker or care provider.
- (11) Other than as provided in pars. (1) to (10), failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in this Ordinance.

c. Procedure. Upon the filing of a petition for review of the conduct of a guardian, the Trial Court shall hold a hearing in not less than 10, nor more than 60, days and shall order that the petitioner provide notice of the hearing to the ward, the guardian, and any other persons as determined by the Trial Court. The Trial Court may authorize use by the petitioner of any of the methods of discovery specified in the Nation's laws or Judiciary Rules in support of the petition to review conduct of the guardian.

d. Remedies of the Court. If petitioned by any party or on the Trial Court's own motion and after finding cause as specified in sub. a, the Trial Court may do any of the following:

- (1) Order the guardian to file an inventory or other report or accounting required of the

guardian.

(2) Require the guardian to reimburse the ward or, if deceased, the ward's estate for losses incurred as the result of the guardian's breach of a duty to the ward.

(3) Impose a forfeiture of up to \$10,000 on the guardian, or deny compensation for the guardian or both.

(4) Remove the guardian.

(5) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.

e. Fees and Costs in Proceedings. In any proceeding under sub. b., all of the following apply:

(1) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

(2) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. b. may retain legal counsel, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. b.

23. Referral for Criminal Investigation.

a. If after a hearing or investigation it appears that a guardian has acted in a criminal manner with regards to their dealings with their ward or the ward's property, the Trial Court and/or CFS shall refer the matter to the appropriate Prosecutor's Office for consideration of criminal charges.

b. The Court and CFS are permitted to share documentation that will assist in proper assessment by the Prosecutor's Office.

24. Appointment of Successor Guardian. When a guardian dies, is removed by order of the Trial Court, or resigns and such resignation is accepted by the Trial Court, and no standby guardian is available, the Trial Court may appoint another guardian in their place in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian.

25. Review and Modification of Guardianship.

a. A ward who is 18 years of age or older, any person acting on the ward's behalf, or the ward's guardian may motion for a review of incompetency, to have the guardian discharged and a new guardian appointed, or to have the guardianship limited and specific rights restored.

b. The motion may be filed at any time after 180 days after any previous hearing under Sections 8-9, or at any time if the court determines that exigent circumstances, including presentation of new evidence, require a review.

c. If a motion is filed, the court shall do all of the following:

(1) Appoint a guardian ad litem.

(2) Fix a time and place for hearing.

(a) A hearing on the issues should be held no longer than forty (40) calendar days from the filing of the motion, provided no continuances have been granted.

(3) Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

(4) Conduct a hearing at which the ward is present and has the right to a jury trial, if demanded.

(a) The ward has the right to a trial by a jury if demanded by the ward or their attorney, except that the right is waived unless demanded in writing to the Trial Court at least forty-eight (48) hours before the time set for the hearing.

(b) The Trial Court shall cause the ward, if able to attend, to be produced at the hearing. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the Trial Court shall permit electronic means to attend the hearing.

(5) The ward has the right to counsel, if any of the following occurs:

(a) The ward requests counsel.

(b) The guardian ad litem or another person states to the Trial Court that the ward is opposed to the guardianship petition.

(c) If the Trial Court determines that the interests of justice require counsel for the ward.

1 If the ward is unable to obtain legal counsel, the Trial Court shall appoint legal counsel.

d. After a hearing or on its own motion, the Trial Court may terminate or modify the guardianship, including restoring certain rights of the ward.

e. A modification will result in the issuance of modified Letters of Guardianship when there is a restoration of certain rights of the ward.

26. Termination of Guardianship.

a. A guardianship of the person shall terminate:

(1) When the Trial Court adjudicates a former incompetent to be competent.

(2) When a ward dies.

b. A guardianship of the estate shall terminate:

(1) When the Trial Court adjudicates a former incompetent or a spendthrift to be competent and capable of handling their property.

(2) When a ward dies.

27. Voluntary Dismissal of Guardianship. The Trial Court may dismiss a guardianship upon the request of the petitioner without a hearing or upon the discretion of the Trial Court.

28. Settlement of Accounts. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or their personal representative shall forthwith render their final account to the Trial Court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the accounting and filing proper receipts the guardian shall be discharged and their bond released.

29. Veterans Guardianships. Notwithstanding any other provision of this ordinance, guardianships involving the estate of any beneficiary of a Veteran's Administration program shall conform to the requirements of the United States Uniform Veteran's Guardianship Act, and the provisions thereof shall control to the extent of any inconsistencies with any other provision of this ordinance.

30. Severability. Should any provisions of this Ordinance be determined invalid by a court of competent jurisdiction, the invalidated provision shall be severed and the remainder of this Ordinance shall not be affected.

31. Effective Date. This ordinance shall take effect upon the approval of the Ho-Chunk Nation Legislature.

Legislative History:

6/18/13	Enacted Adult Guardianship and Spendthrift Ordinance (4 HCC § 14) by Legislative Resolution 06-18-13M.
10/16/24	Adult Guardianship and Spendthrift Ordinance (4 HCC § 14) proposed amendments placed out for 45-Day Public Comment per Legislative Resolution 10-16-24B.
12/17/24	Legislature adopts amendments to the Adult Guardianship and Spendthrift Ordinance.