



COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2: APPLICABILITY OF NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS

Policy 2.1. Adoption of Standards of Practice for Agencies and Programs Providing Guardianship Services

The Colorado Office of Public Guardianship adopts the National Guardianship Association (NGA) Standards of Practice for Agencies and Programs Providing Guardianship Services. Such standards are applied throughout the Colorado Office of Public Guardianship Operating Policies and Manual.

Guardianship is a delegated judicial function that entails a high responsibility to achieve stability or improve the life of a vulnerable adult. In that sense, all guardians owe the person under guardianship the highest allegiance and must operate in an open and ethical manner. Providing guardianship services for a fee heightens the need to assure quality service delivery.

The National Guardianship Association’s purpose in this document is to provide guidance for programs striving to provide quality guardianship services. There are many different types of entities delivering these services across the country. Some of these agencies are private (for profit or not for profit) and some are governmental. Some of these are very small and locally focused. Others are statewide. There is great diversity among agency models. This document is not intended to be all encompassing or prescriptive. The standards are written broadly, so that the principles may be applied to any agency or program, regardless of its size or structure. While aspirational, the standards convey good business practice that agencies and states should consider adopting into policy or law.

The National Guardianship Association (NGA) has previously adopted a “Ethical Principles” and has defined Standards of Practice for the day-to-day provision of guardianship services that expand on the code’s ethical base. Those ethics and standards apply to all guardians whether professional guardians, volunteer guardians or family members. This document defines additional NGA standards for acceptable business practice and program design for non-family guardians who are developing or operating agencies or programs providing professional guardianship services.

NGA defines a guardianship “agency” or “program” as any business or public entity performing as court appointed guardian, whether salaried public employee or for a fee, for individuals who are not related to those providing the services. The agency or program has a fiduciary relationship with and is under a legal duty to act in the best interest of the client, who is the principal in the agency relationship. It may be a free-standing agency or a program within a larger service entity. The services may be supported financially through grants, contracts with state or local

government entities, by fee for service to the estates of the individuals served, or any combination of those mechanisms. The agency standards are also intended to include those programs providing guardianship through the recruitment and training of citizen volunteers who receive court appointment, and function with supervision from professional guardians or agencies. In some cases, if the program more closely resembles a “sole practitioner” design rather than an organization, the program may wish to use individual certification (Registered or Master Guardian) rather than the agency certification process defined in this document.

Like the NGA Standards of Practice, these Agency standards constitute what is considered best practice in guardianship at this time. As a living document, these standards may evolve over time as agencies and programs implement them. The NGA Ethics and Standards committee will continue to monitor this document and will refine the standards as necessary.

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Policy 2.2. Adoption of Ethical Principles

The Colorado Office of Public Guardianship adopts the National Guardianship Association (NGA) Ethical Principles. Such principles are applied throughout the Colorado Office of Public Guardianship Operating Policies and Manual.

The Ethical Principles presents the philosophy of guardianship followed by the National Guardianship Association. The term “guardian” includes all court-appointed fiduciaries. These Ethical Standards are reflected throughout the National Guardianship Association’s Standards of Practice. Guardians should look to the Standards for guidance on ways to carry out these ethical principles, with specific reference to the highlighted standards.

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Policy 2.3. Adoption of Standards of Practice

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The Standards of Practice presents the philosophy of guardianship followed by the National Guardianship Association (NGA). The Standards of Practice outline principles that are NGA ideals for service delivery, and are indicated as current, but evolving “best practice.” Statements of principle are necessary because guardianship services involve the loss of an individual’s fundamental rights. These NGA documents define guardianship as a service that owes full

allegiance to the persons served and to their right to positive influence over the life the person desires and finds satisfying, that recognizes the values, contributions (current and potential) by the person served to that person's communities, and to be supported in a web of relationships, both natural and paid, within the person's communities, and assisted in the least restrictive, least intrusive way that will meet their needs.

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POLICY 2.1 STANDARDS FOR AGENCIES AND
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Standards for Agencies and Programs Providing Guardianship Services

Adopted 2007

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National Guardianship Association

Acknowledgements

The National Guardianship Association [NGA] wishes to express its gratitude to the many individuals who committed time and talent to the development of these standards and helped to improve this process. NGA individual members, state affiliates, Board members and interested parties contributed their time to refine and make these standards better. NGA is grateful to each of those individuals and groups.

Preamble

Guardianship is a delegated judicial function that entails a high responsibility to achieve stability or improve the life of a vulnerable adult. In that sense, all guardians owe the person under guardianship the highest allegiance and must operate in an open and ethical manner. Providing guardianship services for a fee heightens the need to assure quality service delivery.

The National Guardianship Association's purpose in this document is to provide guidance for programs striving to provide quality guardianship services. There are many different types of entities delivering these services across the country. Some of these agencies are private (for profit or not for profit) and some are governmental. Some of these are very small and locally focused. Others are statewide. There is great diversity among agency models. This document is not intended to be all encompassing or prescriptive. The standards are written broadly, so that the principles may be applied to any agency or program, regardless of its size or structure. While aspirational, the standards convey good business practice that agencies and states should consider adopting into policy or law.

The National Guardianship Association (NGA) has previously adopted a "Ethical Principles" and has defined Standards of Practice for the day-to-day provision of guardianship services that expand on the code's ethical base. Those ethics and standards apply to all guardians whether professional guardians, volunteer guardians or family members. This document defines additional NGA standards for acceptable business practice and program design for non-family guardians who are developing or operating agencies or programs providing professional guardianship services.

NGA defines a guardianship "agency" or "program" as any business or public entity performing as court appointed guardian, whether salaried public employee or for a fee, for individuals who are not related to those providing the services. The agency or program has a fiduciary relationship with and is under a legal duty to act in the best interest of the client, who is the principal in the agency relationship. It may be a free standing agency or a program within a larger service entity. The services may be supported financially through grants, contracts with state or local government entities, by fee for service to the estates of the individuals served, or any combination of those mechanisms. The agency standards are also intended to include those programs providing guardianship through the recruitment and training of citizen volunteers who receive court appointment, and function with supervision from professional guardians or agencies. In some cases if the program more closely resembles a "sole practitioner" design rather than an organization, the program may wish to use individual certification (Registered or Master Guardian) rather than the agency certification process defined in this document.

Like the NGA Standards of Practice, these Agency standards constitute what is considered best practice in guardianship at this time. As a living document, these standards may evolve over time as agencies and programs implement them. The NGA Ethics and Standards committee will continue to monitor this document and will refine the standards as necessary.

Standards of Practice for Agencies and Programs Providing Guardianship Services

Standard on NGA Ethics and Standards of Practice¹

I. Standard: Agency/program managers shall demonstrate a working knowledge of the “Ethical Principles for Guardians” and the National Guardianship Association [NGA] Standards of Practice, and shall develop and utilize policies and procedures that reflect the commitment to those standards as well as to the agency standards presented here.

[Intent Statement]: The Ethical Principles presents the philosophy of guardianship followed by the National Guardianship Association. The Standards of Practice outline principles that are NGA ideals for service delivery, and are indicated as current, but evolving “best practice.” Statements of principle are necessary because guardianship services involve the loss of an individual’s fundamental rights. These NGA documents define guardianship as a service that owes full allegiance to the persons served and to their right to positive influence over the life the person desires and finds satisfying, that recognizes the values, contributions (current and potential) by the person served to that person’s communities, and to be supported in a web of relationships, both natural and paid, within the person’s communities, and assisted in the least restrictive, least intrusive way that will meet their needs.

Historically, guardianship has focused on asset preservation more than on person-centered planning, decision making and preservation of the rights of the individual who is the subject of the guardianship. The NGA “best practice” approach focuses on a person-centered philosophy and the guardian’s duty to recognize and respond to the person as an individual with needs, desires and the potential for growth. To fulfill these responsibilities, it is the duty of the guardian to learn as much as possible about:

- 1) the individual’s personal history, culture and family background,
- 2) person-centered planning,
- 3) responsibilities and duties of guardians,
- 4) legal processes of guardianship,
- 5) state certification of guardians,
- 6) alternatives to guardianships and promoting where appropriate supported decision making prior to guardianship

Individual programs may vary in their ability to adhere to these standards in detail. Not all agencies and programs will be able to fully meet all of the Standards of Practice. There may be instances where the service is not provided, or cannot be provided exactly as the standard outlines. Specific state law may mandate variance from a requirement. Other variations in a state’s resources or social service delivery system may affect the design and operation of a particular agency or program. In cases where outside resources, state law, or other factors dictate variance from a standard, the agency/program should indicate in writing the reason for varying from that standard.

Ethical Principles

These principles have been updated to reflect the recommendations from the Third National Guardianship Summit.

II. Operating Standards:

A. Standards on the Governing Authority

1. Standard on Legal Status: The agency or program shall identify in writing its status as a legal entity (i.e. for-profit, not for profit, public agency, subsidiary of a larger entity, sole proprietorship, or other organization) and the decision-making process to determine agency policy.
2. Applicable state law should be identified. If there is a policy-making board, the entity shall assure diversity in its membership and describe in writing the desired composition of that board.
3. If there is no policy-making board, or the board is advisory only, the agency or program must identify the ultimate authority for decision making in the organization.

[Intent Statement]: The leadership of the agency or program must establish its mission and policy and must oversee implementation. It is important to articulate the mission and goals of the organization and to identify the position with ultimate responsibility for overseeing sound business and program practice. The chief executive in charge of and responsible for the organization must be identified as well as how that position relates to the governing board, if there is one. Relationships must be defined in agency policy for the entity to function effectively (such as an organizational chart or job description).

B. Standards for a governing board: If a board structure is chosen, its functions shall be identified in writing and by policy. The board shall set:

1. Guidelines concerning board member attendance
2. Criteria that would require the members to abstain from voting due to conflicts of interest.
3. The Board shall have the authority to approve the agency budget.
4. The Board shall oversee program outcomes.
5. The Board shall receive the independent financial review results when completed.
6. To carry out those duties, new board members must receive an orientation to the mission and policies of the organization.
7. If the board receives compensation for its services, the amount and justification for that compensation must be defined.
8. The board members should be given a copy of these standards and "Ethical Principles for Guardians" and the National Guardianship Association [NGA] Standards of Practice, as well as any applicable state or local standards and ethics policies, to familiarize them with the applicable standards and code of conduct for a guardian.

[Intent Statement]: To be an effective decision making body, an operating board must have access to information about how the agency or program goes about achieving its mission. The board must be aware of situations that might place board members in a conflict of

interest and must assure that members agree to avoid such situations. The board must have the authority and the expertise, both financial and programmatic, to review and approve or question aspects of the operation and must obtain an independent financial audit at least every three years, with annual fiscal reviews in interim years. The board should not receive unreasonable compensation that dilutes the agency's ability to provide high quality services to its clients.

C. Standard on Programs within Larger Entities: If the guardianship program is housed within a larger agency:

1. It must be at arms length and function independently.
2. The program must be independent from those providing other services to the same clientele.
3. The guardianship division shall have decision-making ability independent of the other service divisions.
4. The guardianship division must have clearly delineated strategies for avoiding conflicts of interest.
5. The guardianship division will scrupulously examine direct service costs and assure that it requests the most appropriate, least costly provider for direct services to its the person under guardianship.
6. If a direct service or group of services is provided to a person under guardianship for additional fees, the guardian must disclose that to the appointing court.
7. Where appropriate and feasible the guardian must obtain court approval of those fees.

[Intent Statement]: Housing guardianship services within an agency that also provides direct services to the same individuals is not recommended because the important advocacy function of the guardian is impacted by that design. Standard 16 of the NGA Standards of Practice requires that "the guardian shall not be in a position of representing both the person under guardianship and the service provider." It further prohibits the provision of housing, medical, legal, or other direct services to the person under guardianship, except as a last resort. There are very real dilemmas and ethical pressures inherent in guardianship work. It is imperative that the guardian not be intimidated or in a subordinate position to others providing direct service to the persons under guardianship. It is also important that the guardian avoid any appearance of impropriety or self-dealing in obtaining services from the agency which houses the guardianship service. The guardian's ability to advocate, including the ability to sue on the individuals behalf, may be negatively affected when the agency is also the direct service provider. Where this situation cannot be avoided, there must be some neutral oversight provided. Where a guardianship agency is under the jurisdiction of another agency which may pose a conflict of interest or perceived conflict of interest, there should be a memorandum of understanding with an appeal process to resolve any conflict. The guardian should provide evidence of costs and justification for those fees in the information provided to the court, and seek its approval if appropriate.

III. Personnel Standards: *The agency/program managers shall:*

A. *Employ competent staff with the training and experience to provide quality service to the individual.*

B. Agency management shall recruit, train, and retain personnel who meet the identified needs of the individuals receiving service and contribute to the organization's mission.

1. Program Staff: The agency/program managers shall have a written policy that assures there is sufficient qualified staff to provide services to each individual, taking into consideration that there may be periods of insufficient staff support.

[Intent Statement]: The agency/program managers shall assure that adequate program staffing levels are identified and maintained. These staffing levels will be dependent upon the type of guardianship and other services provided. Adequate staff to client ratios must be established to assure that access to and implementation of person-centered decision making is not impaired or delayed. The design of caseload assignments should include not only the guardian caseworker, but also the number of support staff required to fully support the case. Creative use of support staff such as bookkeepers, property managers, guardian assistants and volunteers can lessen the caseworkers' workload and enable them to spend more time with the persons under guardianship. The addition of an Information Specialist to help upgrade technology may be justified. The agency may also need to develop and document a process for caseload weighting to assure that complex cases do not overwhelm individual guardian caseworkers and that less active cases are not neglected.

2. Hiring Practices: The agency/program managers shall operate utilizing federal regulations on non-discrimination in hiring practices:
 - a. The agency/program will have written policy that assures that prospective staff references are checked and that those hired have at least the minimum education, training and experience to serve the program's clientele.
 - b. All applicants for employment must undergo a criminal background and abuse registry check and any other screenings such as a credit check and drug testing that comply with state law.
 - c. If an agency recruits and trains volunteers to be guardians, they, too, must provide references and submit to the same background checks as paid staff.

[Intent Statement]: All staff should have the qualifications to perform the functions identified in their job descriptions and any applicable licensure or educational requirements for their positions. There must be an identified process for verification of education, work experience and reference checks. The agency or program shall assure that current licenses and educational documents are on file. Finally, guardianship is a fiduciary relationship and persons who are served by guardians are often vulnerable. Criminal background reports must be obtained to prevent the employment of inappropriate individuals. The agency/program managers are encouraged to require recurring background checks on a periodic basis to be sure persons under employment remain qualified to serve in their positions.

3. Orientation Training: The agency/program managers shall identify the structure or protocols for training new staff by written policy

and assure that all new staff is provided with orientation to the program services and philosophy of that service.

[Intent Statement]: Effective guardianship services cover complicated issues crossing many disciplines, based on the specific characteristics of the individuals served. The agency/program staff will be asked to make decisions that affect the daily lives of the individuals, their financial and personal well-being. Therefore, the management team must assure that new staff is well prepared *prior to* providing such services. The training curriculum for new staff should include at a minimum:

- NGA Standards of Practice for Guardians/ Ethical Principles
- NGA Agency Standards
- Fundamentals of Guardianship, Applicable Federal and State Law
- Characteristics of the population served
- Appropriate Terminology (i.e. "Person First" language, etc.)
- Active Listening Skills
- Overview of State and Local Social Services and Resources
- Agency/Program Policies and Procedures
- Protective Services Laws and Requirements
- Confidentiality and Decision-Making Ethics
- Medical decision-making

4. Continuing Education: The agency/program managers shall have a written policy that assures that all staff members and volunteers who become guardians attend a minimum number of hours of continuing education training applicable to their work on no less than an annual basis.

[Intent Statement]: Developments in medical, legal and social services occur rapidly and the staff delivering program services must have access to the latest information and training in areas affecting guardianship. The agency may provide some training hours in-house, but should look to outside sources as well. Some of the training should cover research-based information as the field continues to develop. A minimum number of annual training hours should be required for each staff person or volunteer delivering services directly to individuals. (For example, the Center for Guardianship Certification requires twenty hours over two years to maintain a professional certification as a Registered Guardian, or thirty hours over three years for a Master Guardian.)

5. Administrative and Support Staff Training: The agency/program managers shall have a written policy that assures that administrative and support staff members attend training on the program mission and the characteristics of the individuals served.

[Intent Statement]: It is likely that support staff will interact at times with the individuals served by the program. Even if they do not, it is important for the success of the program for these staff to identify with the mission and to learn the characteristics of those served, in order to enhance their ability to be effective in their support roles. Specifically, Reception and Fiscal staff interacting with individuals should also undergo training in the use of

“Person First” language and person-centered guardianship. This is the terminology preferred by the disability community, and refers to the person by name and then identifies a disability only if necessary (i.e., “person with schizophrenia, person who uses a wheelchair, etc.) These staff members should also receive training in active listening skills, techniques for calming an angry individuals and techniques in supported decision-making. Information on these topics should be available from program staff. This does not have to be external training.

6. Job Descriptions: The agency/program managers or governing board shall develop written job descriptions for all positions that identify the minimum qualifications for the position as well as its responsibilities. Job descriptions should be reviewed regularly and updated as needed.
7. Annual Appraisal: The agency/program managers shall have a written policy and utilize a specific process for appraising each employee’s performance.
 - a. Each person employed by the agency, including the agency director if there is an operating board, shall have a performance appraisal annually.
 - b. Regular, periodic supervision should be provided during the initial employment period for employees providing guardianship services to persons under guardianship.
 - c. Staff with state certification and/or certified as Registered or Master Guardians through the Center for Guardianship Certification should provide such supervision.

[Intent Statement]: In order to continually improve the quality of services provided to clients, the individuals providing those services must receive regular feedback and set goals for improving their skills on a regular basis. New program staff should have a series of sessions over the first six months of employment to confer with a supervisor regarding plans for the individuals served. The supervisor must review and mentor the employee to assure that there is an understanding of the NGA Standards of Practice and that the employee is applying them for the individual. Once the employee has successfully completed the initial employment period, the supervisor should review performance no less than annually in writing.

8. Use of Volunteers in Guardianship Programs: The agency/program managers shall have a written policy that:
 - a. Defines the role and job description of any volunteers used to support the person under guardianship.
 - b. Documents that it provides appropriate training, support, and technical assistance to them.

[Intent Statement]: There are many ways that dedicated volunteers can enhance the lives of the individuals served by the agency/program. While the problem of limited resources can be partially addressed by using volunteers, “volunteer” never equals “free.” It is true

that volunteers can fulfill many, if not all the roles of paid staff. However, volunteers also need support, supervision, job descriptions and a defined role with parameters. Volunteers may be guardians, with full powers, personally appointed by the court, after the agency trains and certifies them. Volunteers may also fill the role of guardian assistant, visitor, or other supportive services functions. In any of those roles, the volunteer is functioning as unpaid staff, and must follow the same agency/program policy and procedure as paid staff, as the procedures apply to their roles. Policies governing screening, background checks, and training apply equally to a volunteer filling a defined role, and the volunteer must also be subject to termination for poor performance. Volunteers must understand the fiduciary relationship, the Ethical Principles and the NGA Standards of Practice, and have received some training in person-centered decision making.

C. Certification Requirements for Program Staff:

1. At least one member of the management team shall hold certification from the Center for Guardianship Certification either as a Master Guardian, or be a Registered Guardian with a minimum of five years experience.
2. All professional guardianship staff having direct responsibility for persons under guardianship shall hold current state and/or national certification at the Registered Guardian level or be required to attain it within two years of their employment.

[Intent Statement]: Because curricula in social services, medical and legal fields do not generally include guardianship, certification from the Center for Guardianship Certification is necessary. The CGC is a testing and certification entity separate from the NGA that understands the philosophy and of NGA, and supports the effort to increase that understanding among practitioners. The program director should have certification at a minimum as a Registered Guardian, and must have at least five years' experience working in guardianship. It is preferred that the top program manager be certified at the Master Guardian level.

IV. Fiscal Standards: The agency/program managers shall maintain fiscal stability. Fiscal Standards shall follow the tenets of the NGA "Ethical Principles" and the NGA Standards of Practice. Agency/program management staff will assure that these principles guide the Fiscal Standards.

A. There shall be written policies that demonstrate that the organization is operating in accordance with Generally Accepted Accounting Principles.

B. These policies shall assure the organization operates in accordance with accepted business practices for a fiduciary and the requirements of applicable state law.

C. Fee Structure:

1. The agency/program shall have written policy regarding the source of its funding.

2. The agency/program shall have a written fee structure for services to individuals.

[Intent Statement]: Guardianship is a fiduciary relationship and fees for service should be open to scrutiny by the court or other government entities in a position of oversight of the agency or program, as well as to the public. Whether the agency is a public entity or a private one, the fiduciary nature of guardianship also requires that fees be reasonable for services rendered. To avoid the appearance of impropriety and any conflict of interest, the agency/program's policies concerning fees/funding must be consistent with the NGA Standards of Practice and be clear and open to public scrutiny.

D. Fiscal Controls: The agency/program managers shall demonstrate:

1. That the operation uses sound fiscal controls and Generally Accepted Accounting Principles.
2. The organization will arrange for an outside review/audit of the financial records of the agency by an independent entity periodically.
3. The results of the review/audit will be provided to the board or managing officers upon completion.

[Intent Statement]: Outside review or audit of the agency/program's fiscal situation provides the checks and balances necessary to assure good fiscal management. Whether it is conducted by a CPA or by a governmental entity, it should be separate from any group or entity with direct oversight responsibility for the agency/program to assure objectivity. The agency/program will demonstrate by board minutes or policy that action has been taken on exceptions noted by that fiscal review or audit. If the agency/program is audited by a governmental or funding entity already, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or board of directors.

E. Financial Agency Records: The agency/program managers shall demonstrate by written policy and practice that they operate within a system of internal controls that:

1. Govern receipts and disbursements.
2. Assure that funds for business/client operations are handled prudently.
3. Demonstrate that checks and balances are in place.
4. Retain fiscal records to reflect those practices.
5. The agency/program shall also demonstrate that it has obtained adequate insurance coverage for its business design.
6. The agency has sufficient bonding as required by state law.

[Intent Statement]: Operating on a sound fiscal basis helps to ensure the stability needed to meet the agency/program's fiduciary responsibilities to its clients. Using Generally Accepted Accounting Principles, and keeping records of those practices including payroll records, budgets, monthly financial reports, bank statements, accounts receivable and accounts payable, gives the management team the tools needed to track operations and

identify problems in a timely manner. Insurance policies must be comprehensive and include liability coverage for owners, staff, volunteers as well any of the board of directors. Insurance policies should be accessible and coverage should also be adequate to protect the organization. The organization must also be bonded at the amount required by state law and/or local court rule.

F. Client Financial Records: If the agency provides services as representative payee or as guardian of the estate, the agency/program managers shall demonstrate by written policy and practice that there is a system of internal controls to protect the funds of the persons for whom it provides daily money management or estate services. Policies will reflect that:

1. The entity provides separate accounts, or keeps separate ledgers if the accounts are pooled, for individuals served.
2. Applicable local, county, state and federal statutes and regulations are followed.
3. The agency/program adheres to the principles of the "Prudent Investor Rule" for managing estates. The agency/program managers have a goal to manage, but not necessarily eliminate risk.
4. The organization demonstrates a system of checks and balances so that client accounts are not accessible to unauthorized individuals.
5. At least every three years, an external audit of client financial records is conducted.
6. An identifiable client file is recommended.

[Intent Statement]: In addition to the programmatic responsibility for prudent management, the organization must demonstrate that it has taken steps and by policy protects the assets of the individuals it serves. There should be continuing dialogue between the program staff and any bookkeeping staff to assure continuity of money management services. There should be a policy and statement as to who is authorized to approve expenditures. Ideally guardian caseworkers will not write checks or handle client funds directly. There should be an approved group of staff with check signing privileges. There needs to be a system of verifying if goods and services were purchased or provided and they should be separate from those who generate the checks. An external auditor should audit client accounts no less than every three years. If the agency/program is audited by a governmental or funding entity already, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or board of directors.

G. Required Reports: The agency/program managers shall have a written policy and demonstrate that it is timely in submission of all required financial reports, including accountings, to the appointing court and to persons served by the guardianship service.

[Intent Statement]: The appointing authority is charged with monitoring the work of the guardian it appoints. The guardian has an affirmative duty to be timely and the agency/program seeking certification should be able to demonstrate effective, prudent

management of individual assets. Timeliness also indicates effective service delivery to the appointing authority.

V. Program Services Standards: Program design and operation shall follow the tenets of the NGA “Ethical Principles” and the NGA Standards of Practice. Agency/program management staff will assure that these principles guide program design and day-to-day services.

A. Clientele: The agency/program managers shall identify the individuals served and the type of service offered:

1. The program’s plan should include the criteria for acceptance.
2. The process used for a waiting list, if any, and the process for denying service if permitted by state law.
3. If the agency/program is appointed guardian of someone whose needs differ from the primary clientele, the organization shall consult with appropriate professionals to develop the capacity to provide informed consent for that individual.
4. The agency/program must develop a triaging system that identifies which referrals will be accepted as urgent.
5. The program plan should identify criteria that:
 - a. Would place an individual on a waiting list.
 - b. What referrals are inappropriate for the guardianship provided by the agency and
 - c. What referrals are inappropriate for guardianship but are appropriate for less restrictive alternatives.

[Intent Statement]: When the social services, legal or medical community finds a willing resource for guardianship, the agency/program may be overwhelmed with referrals. It is critically important to stability and the quality of service delivery, that the organization takes only those cases it has the expertise to handle. An agency that has expertise in serving a particular population will need to consult with appropriate experts if appointed guardian for an individual whose needs are different in type and scope from their other clientele. Service systems vary in their structure and services among the various populations who may need a guardian. If the person is an older adult with dementia, the service system may differ from that serving a young person with a developmental disability or a mental illness.

It is also likely that the organization will receive inappropriate referrals. Individuals who are described as making “poor” decisions, but who are competent, may be referred to another agency such as Adult Protective Services. An older adult in an acute hospital setting may be diagnosed with dementia, although the true condition is delirium. There must be procedure to guide staff in the situation where the referral is inappropriate, and in situations where the person has disabilities with which staff is unfamiliar. In a similar vein, if the organization provides estate management only, and staff credentials are primarily financial, the program should seek advice on meeting the personal needs of the individuals served, in order to develop the person’s financial plan.

B. Intake Process: The agency/program shall have written policy that assures that the intake process includes a thorough analysis of the individual referred while still respecting the person's right to confidentiality. Intake should include:

1. A functional assessment of the person's decisional capacity.
2. An investigation of the person's life circumstances including personal history and informal supports.
3. An investigation will be conducted to assure that the least restrictive\alternative is chosen to meet the person's personal and financial goals, needs, and preferences, and shall include to the extent possible consult with family members and friends.
4. If a court appoints the agency/program prior to such an assessment:
 - a. The guardian must then conduct its own investigation to determine if the appointment is appropriate, or if there is a less restrictive alternative.
 - b. If there is a way to meet the individual's needs that is less than full guardianship, the agency/program should bring that alternative to the attention of the appointing court.

[Intent Statement]: These NGA documents define guardianship; as a service that owes full allegiance to the persons served and to their right to positive influence – over the life the person desires and finds satisfying, that recognizes the values contributions (current and potential) by the person served to that person's communities, and to be supported in a web of relationships, both natural and paid, within the person's communities, and assisted in the least restrictive, least intrusive way that will meet their needs. Guardianship by its nature means removing rights from a client and, giving them to a third party. This legal step should not be taken without complete information. In many cases, competency can be retained in areas not covered by the authority given to a guardian. Limited guardianships, powers of attorney, informal support systems and representative payeeships are means of supporting an individual without removing all legal rights. To choose a less restrictive alternative, it is necessary to gather as much information as possible about the individual's functional capacities and supports. Utilizing this comprehensive approach to assessment enables the organization to serve the individual with the most appropriate mechanism and to include the individual in the decision-making process. In some states the law requires the use of multidisciplinary teams to assess an individual who is subject to a guardianship hearing. Usually one assessor must be a physician, but the team may also use geriatric nurses or social workers, psychologists and other specialists versed in the appropriate field. This gives a more comprehensive look at the person's ability to function. Many states continue to require only a medical evaluation. In those states, the agency/program must supplement the information with a more thorough background investigation that includes the individual's participation in a person-centered analysis in order to determine the most appropriate service.

In places where state law mandates it, or the design of the guardianship service allows the guardian to be appointed without its knowledge or review, the agency/program following the NGA Ethical Principles has an affirmative obligation to advocate for less restrictive

alternatives where they exist. The agency/program staff should still conduct an intake assessment, gathering the same information and working to identify the least restrictive, most appropriate intervention for the person chosen to meet the person's personal and financial goals, needs and preferences. If a less restrictive alternative is identified, the guardian should then approach the appointing court and seek a limited guardianship or identify other alternatives to meet the person's personal and financial goals, needs and preferences.

C. Case Assignment and Weighting Procedure: The agency/program managers shall identify in writing the process used for assigning caseloads to staff.

1. The assignment process shall be designed to assure that employees are able to effectively manage the cases and provide appropriate support for the individuals on that caseload.
2. The agency/program managers shall establish a caseload ratio and/or weighting system and make the commitment to maintain it.
3. The agency/program managers shall also have a plan to address what will be done if the ratio is exceeded.

[Intent Statement]: The amount of work and involvement in the life of a person under guardianship differs depending on the type of service provided and the personal and financial goals, needs and preferences of the individual. Factors such as geography, the type of case required, whether the person lives in a group setting, or in the community independently, all affect the difficulty of the caseload. Multiple, complex medical conditions may require more time from the guardian caseworker advocating for an individual than for someone whose health is stable. The time required in money management services can be extensive, if bookkeeping and clerical functions are also included. One key to the dilemma of case overload is to identify duties that can be delegated to well-trained support staff. It may be possible to assign functions to a bookkeeper or hire a property manager to free the time of the guardian caseworker and provide more individualized service to the person under guardianship. A pool of volunteers may be used to provide support services or to act as guardian for stable, uncomplicated cases. Guardian assistants may be used for some functions. However, the case assignment system is designed, it is critically important that the organization identify the best use of the time of its employees and provide enough support to assure that the individual under guardianship is regularly visited and has access to the most appropriate support and advocacy when it is needed.

D. Guardianship Plan Procedure: The agency/program managers shall have written policy and documentation of a process for planning services for the individual:

1. The guardian should develop a plan at the time of service initiation and update it at least annually thereafter.
2. The guardianship plan shall include an analysis of the person's strengths and abilities, needs and preferences.
3. It shall set goals for enhancing the quality of the person's life.
4. The guardianship plan should also address annually the continuing need for a guardian.

5. The guardianship plan will specify the steps needed to be taken to restore the individual's rights.
6. The guardianship plan may include a budget for the individual.

[Intent Statement]: Goals for service to the individual can assist caseworkers in targeting their efforts toward those activities that will enhance the quality of life of the person. What actions are needed and who will perform them will vary depending on the needs of the individual and should be identified at the beginning, in order to effectively manage the case. Goals written in a case plan also provide necessary continuity for the individual under guardianship when there is turnover, or the individual's guardian caseworker is unavailable due to illness or other extended absences. If the individual has become stable and regained capacity, the plan should include a process for ending the guardianship and restoring the person's rights. This is a case plan for the guardian's service to the person under guardianship, and is different from a mental health services, habilitation or other provider plan.

E. Guardian Supervision: The agency/program managers shall have written policy and document that they provide experienced supervision for all cases.

1. Guardianship caseworkers should have a schedule of case review on a quarterly basis to assure that the individual's goals are being addressed.
2. The primary program manager should be a Registered Guardian or functional equivalent under local law, with at least five years' experience in guardianship work. (Certification as a Master Guardian is preferred.)
3. Intermediate supervisors providing oversight shall be certified at the minimum with state and/or national certification such as a Registered Guardian from the Center for Guardianship Certification.
4. The agency/program managers should also establish an internal Ethics Committee process for decisions that are ethically complex or controversial.
 - a. The agency/program managers will review and be involved in the decision.
 - b. External Committees or Court direction may be sought as well.

[Intent Statement]: Regular, periodic case supervision provides assurance that the individuals under guardianship gain stability or improvement in their lives as a result of that intervention. The supervisor or program manager should hold certification at the state and/or national level, or be working on such certification. The lead program manager should hold certification as a Registered Guardian with at least five years experience in guardianship work or, preferably as a Master Guardian, from the Center for Guardianship Certification. Further, as the issues guardians face are often ethically complex, the agency should provide a way to share responsibility with guardian caseworkers for the most difficult decisions. The agency/program should have a mechanism to call an internal Ethics

committee meeting for caseworkers to obtain guidance when decisions are difficult, affect the fundamental well being of the person served, or are ethically complex. On rare occasions, some decisions may be so controversial or difficult that an external Ethics Committee should be consulted or a Request for Instruction should be filed with the appointing court.

F. Documentation, Confidentiality and Record Retention:

1. The agency/program managers shall have a written policy and procedure for documenting the case plan.
2. The procedure shall include actions taken for an individual under guardianship.
3. The individual file shall contain:
 - a. Complete assessment information (including a values history wherever possible).
 - b. The current case plan.
 - c. Documentation of visits and interactions with and on behalf of the person.
 - d. Legal petitions and letters of guardianship
 - e. Historical and current accountings
 - f. Correspondence
 - g. Other legal or medical records that are necessary for the care and efficient administration of the estate.
4. The agency/program shall have written policies and procedures for assuring:
 - a. The confidentiality of these records.
 - b. The disposal of records and a policy regarding record retention.
 - c. The management of the information within the parameters of relevant state and federal laws (i.e., HIPAA, IRS, etc.)

[Intent Statement]: The fiduciary relationship between the agency/program and the individual requires that clear documentation be kept of the actions taken on behalf of the person under guardianship. Appropriate statutes governing record retention and any court orders must be followed. The agency/program should have a process for controlling access to records and of culling and destroying personal information that complies with confidentiality requirements and protects against identity theft. There should be policies addressing the security of records and a system for documenting access to the file. There should also be a procedure governing the release of confidential information to others that conforms to applicable law.

G. Emergency Coverage Procedure: The agency/program managers shall have a written policy and assure that services are accessible after regular business hours, at night and on weekends.

1. The mechanism for such coverage shall be identified and have the capacity to respond immediately to the emergency needs of the individuals served.
2. Someone with the authority to make important decisions that protect and support the persons served must be available at all times should the need arise.

[Intent Statement]: Individuals served under guardianship may require emergency assistance. Emergencies will range from serious medical crises to eviction, to utility shut offs, depending on the nature of the legal relationship between the agency/program and the person. There must be a way for medical and other service providers to reach a decision maker in these situations. An individual under guardianship cannot give informed consent for treatment. A person whose estate is controlled by a guardian may need financial assistance on a weekend. The organization may choose a number of different strategies to establish coverage. Rotating staff "on-call" coverage, hiring a staff person to provide after-hours coverage or contracting with an answering service with the capacity to reach a program representative are some examples of methods that can be used to provide this coverage.

H. Client Funds Management: The agency/program managers shall have written policies and procedures that follow the tenets of the NGA "Ethical Principles" and the NGA Standards of Practice and:

1. Guarantee the safety of the funds managed for individuals served, if money management is one of the agency services.
2. The plan for use of the money shall include participation from the individual wherever possible.
3. The Plan will assure that the funds are used prudently to benefit the individual to the greatest degree possible.
4. The funds belong to the individual, however, and should not be hoarded, commingled or distributed to other persons under guardianship.
5. Staff will establish a budget to meet the basic safety and needs of the person.
6. The staff will make an effort to provide for special purchases or amenities if funds permit.
7. Reasonable efforts need be made to ascertain the individual's estate plan if allowed by the court or under applicable law.

[Intent Statement]: There is a natural tension between the controller of funds and the individual, especially when the individual has not entered into the arrangement voluntarily. The agency/program must have a system that guarantees the greatest degree of safety for any assets held in this trust relationship. The agency/program must also assure that the individual has access to funds in emergency situations and that the individual does not lack food, shelter or daily living necessities as a result of the agency's funds management

policies or practices. There should also be enough flexibility to encourage and assist the person to act on his or her own behalf and to participate in decisions, and to have wishes met, as well as basic needs, as funds permit. While saving and investing are positive goals, these activities should not override the person's ability to use some funds for recreation, leisure and other purchases for personal enjoyment if funds are available.

I. Required Reports: The agency/program managers shall demonstrate by policy and practice the timely submission of programmatic reports to the appointing court about the well-being of the person under guardianship, as required by state law and local court rule.

[Intent Statement]: The appointing authority is charged with monitoring the work of the guardian it appoints. The guardian has an affirmative duty to report on a timely basis, and the agency/program seeking certification should be able to document to the court its progress in achieving its goals to stabilize or improve the person's quality of life.

VI. Quality Improvement: The agency/program managers shall identify a plan in writing and document actions taken to improve the quality of its service delivery.

A. The organization shall undertake an internal program evaluation annually.

B. The organization will arrange to have an external program audit by an objective third party on a biennial basis.

C. If the agency/program is already required to undergo a program evaluation by a third party, the results of that evaluation may be considered to meet this requirement. The agency/program shall utilize the results of such program evaluations to improve the quality of its service delivery.

[Intent Statement]: Although the service is not voluntary, many individuals under guardianship may be able to articulate their feelings about the service. The agency/program should seek their input through an internal evaluation, as well as seek input from other stakeholders such as funding and referring agencies, courts, an advisory board, and/or family members. Additionally, the organization should seek out an independent third party who is clinically knowledgeable in the area of guardianship services to perform an external program evaluation. Ideally this would be conducted on a biennial basis. Where the program has outside programmatic assessments conducted periodically by a funding entity or other governmental unit, that program audit may be used to meet this requirement.

VII. Grievance Procedure: The agency/program managers shall have a written grievance procedure that includes:

A. The process to be followed including contact names and addresses;

B. Time Limits for filing and responding to grievances;

C. Provision for the grievant to obtain an advocate;

- D. Reasonable accommodations for those with communication impairments or who speak a language other than English;
- E. Requirement of a written response to the grievance.
- F. Contact information for the appointing court.

[Intent Statement]: Individuals under guardianship must be able to voice grievances and recommend changes in policies and services, free from restraint, interference, coercion and discrimination or reprisal. The loss of rights involved in the guardianship appointment makes this grievance process even more crucial in ethical service delivery. There may also be circumstances where the grievant is a family member, friend or service provider. Policy on how these will be addressed is a protection for the agency, as well. Where the grievance process fails to satisfy the grievant, information should be provided on how to contact the appointing court.

VIII. Critical Incidents: The agency/program managers shall have a written policy defining and determining how staff will respond to critical incidents.

- A. This policy shall entail responding to situations that bring harm to clients or staff or that cause a disruption of services.
- B. The policy should also include specific instructions about reporting suspected abuse, neglect or exploitation of a client to authorities in compliance with state law.
- C. The policy shall track critical incident reports to determine any trends that might need to be addressed.

[Intent Statement]: Knowing what to do in a crisis situation can alleviate the effects of such an event. To be proactive, the agency/program must monitor the work/service environment for the safety of clients and staff. A plan for response steps when a critical incident occurs can lessen the impact of the incident (i.e., fire, assault, serious injury or untimely death of staff or client.) Further, in many states guardianship caseworkers are "mandatory reporters" who must formally report suspected abuse or neglect. Staff should understand how the state's Adult Protective Service system works and when they are to report suspected client abuse to those authorities as well as to the agency/program managers.



COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2.2 ETHICAL PRINCIPLES

The Colorado Office of Public Guardianship adopts the National Guardianship Association Ethical Principles.

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National Guardianship Association Ethical Principles

1. A guardian treats the person with dignity. (Standard 3)
2. A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)
3. A guardian selects the option that places the least restrictions on the person's freedom and rights. (Standard 8)
4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
5. A guardian maximizes the self-reliance and independence of the person. (Standard 9)
6. A guardian keeps confidential the affairs of the person. (Standard 11)
7. A guardian avoids conflicts of interest and self-dealing. (Standard 16)
8. A guardian complies with all laws and court orders. (Standard 2)
9. A guardian manages all financial matters carefully. (Standard 18)
10. A guardian respects that the money and property being managed belong to the person. (Standard 17)

The term "guardian" includes all court-appointed fiduciaries. These Ethical Standards are reflected throughout the National Guardianship Association's [*Standards of Practice*](#). Guardians should look to the Standards for guidance on ways to carry out these ethical principles, with specific reference to the highlighted standards.



Ethical Principles

The term “guardian” includes all court-appointed fiduciaries. These Ethical Standards are reflected throughout the National Guardianship Association’s Standards of Practice. Guardians should look to the Standards for guidance on ways to carry out these ethical principles, with specific reference to the highlighted standards.

Download NGA’s Standards of Practice for free at www.guardianship.org.

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National Guardianship Association Ethical Principles

1. A guardian treats the person with dignity (Standard 3)
 2. A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)
 3. A guardian selects the option that places the least restrictions on the person's freedom and rights. (Standard 8)
 4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
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 6. A guardian keeps confidential the affairs of the person. (Standard 11)
 7. A guardian avoids conflicts of interest and self-dealing. (Standard 16)
 8. A guardian complies with all laws and court orders. (Standard 2)
 9. A guardian manages all financial matters carefully. (Standard 18)
 10. A guardian respects that the money and property being managed belong to the person. (Standard 17)
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COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2.3 STANDARDS OF PRACTICE

FOR GUARDIANS

The Colorado Office of Public Guardianship adopts the National Guardianship Association Standards of Practice for Guardians. Such standards are applied throughout the Colorado Office of Public Guardianship Operating Policies and Manual.

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Standards of Practice

*Adopted 2000
Fourth Edition - 2013*

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National Guardianship Association

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Preamble

Developing standards for guardians has been an ongoing challenge for the National Guardianship Association (NGA). Not only has the profession undergone rapid change since the original seven standards were written in 1991, but the basic issues have been, and remain, imprecise and difficult to define for a national, membership-based organization. A basic philosophical element complicating the process has been the need to strike a consistent balance between standards that represent an ideal and those that recognize practical limitations, whether for a family guardian or for a professional guardian.

In July of 1991, the NGA adopted a previously published Code of Ethics to guide guardians in their decision-making process. The next task of the NGA was to formulate specific standards to be applied in the day-to-day practice of guardianship. The seven original standards of practice that were written and adopted by the NGA in 1991 have now been expanded to cover more of the duties and responsibilities that face court-appointed guardians today.

The same lengthy discussions that took place in 1991 occurred again during each updating of the standards. These discussions centered on the need to state what is "right" versus the need to recognize and accept the inevitability of the status quo-- too many clients, not enough funding or staff. While we all agree that such restrictions are all too commonplace, we also feel that little is gained by simply accepting a substandard or unacceptable state of affairs. NGA has, therefore, adopted standards that we feel reflect as realistically as possible the best or highest quality of practice. In many cases, best practice may go beyond what state law requires of a guardian.

In reading this document, it is important to recognize that some of the standards enunciate ideals or philosophical points, while others speak to day-to-day practical matters. Both approaches are critically important. It is not our ambition to prescribe a precise program description or management manual. Rather, we have sought to shape a mirror that practitioners and funders can use to evaluate their efforts. The standards also reflect the mandate that all guardians must perform in accordance with current state law governing guardianships and certification of guardians.

To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." The guidelines that appear in some standards are suggested ways of carrying out those standards.

This document embodies practices and standards from a number of professional sources. As such, it sometimes makes unavoidable use of legal and medical "terms of art" where they would commonly and most accurately be used by professionals who work in the particular area. In addition, the field of guardianship itself makes use of terms that vary widely from state to state. "Guardian" and "person under guardianship" or "person" are the terms used here to simplify the many references to these roles. Where points apply to professional, as opposed to family, guardians, they are indicated. "Guardian," as used in the standards, means guardian of the person, guardian of the estate or guardian of the person and estate, depending on the standard being addressed.

In this work we have drawn on a number of collective sources. First and foremost have been NGA members who have contributed extensive time and energy and valuable input into the development of these standards. The *Model Code of Ethics for Guardians*, developed by Michael D. Casasanto, Mitchell Simon, and

Standards of Practice, National Guardianship Association

Judith Roman and adopted by the NGA, has formed the foundation from which the standards were developed. Other very important sources that helped in the creation of our standards of practice are the U.S. Administration on Aging, the AARP, the Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, Washington, California, Illinois, Minnesota, and Michigan. We thank everyone listed above and others for their ongoing commitment to the profession of guardianship.

The *NGA Standards of Practice for Guardians* were first adopted by the NGA Board of Directors and ratified by the membership in 2000. The 2003 edition of the *Standards* incorporates language that came forth from *Wingspan 2001*, the National Conference on Guardianship Reform. The 2007 edition provides minor clarification of the language in the earlier editions without any substantive changes. These *Standards* were used as a starting point by the 2011 Third National Guardianship Summit in developing new standards. The 2012 edition incorporates the Summit Standards.

Please be advised that any entity adopting these standards should give attribution to NGA.

Check the NGA Website (www.guardianship.org) for the most current edition of the *NGA Standards of Practice*.

NGA Standards of Practice

○ **NGA Standard 1 – Applicable Law and General Standards**

- I. The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships.
- II. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians.
- III. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.
- IV. Every guardian should be held to the same standards, regardless of familial relationship, except a guardian with a higher level of relevant skills shall be held to the use of those skills.

○ **NGA Standard 2 – The Guardian’s Relationship to the Court**

- I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and all decisions and actions shall be consistent with that court order.
- II. The guardian shall obtain court authorization for actions that are subject to court approval.
- III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions.
- IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.
- V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.
- VI. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but no less often than annually. Ways that guardians of the person and of the estate keep the court informed about the well-being of the person and the status of the estate include but not limited to:
 - A. Personal care plans and financial plans,
 - B. Inventories and appraisals, and
 - C. Reports and accountings.
- VII. The guardian shall use available technology to:
 - A. File the general plan, inventory and appraisal, and annual reports and accountings,
 - B. Access responsible education and information about guardianships, and

C. Assist in the administration of the estate.

VIII. The guardian shall promptly inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian's authority.

○ **NGA Standard 3 – The Guardian's Professional Relationship with the Person**

I. The guardian shall treat the person under guardianship with dignity.

II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.

III. The guardian may not engage in sexual relations with a person unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.

V. The guardian shall seek ongoing education concerning the following:

- A. Person-centered planning,
- B. Surrogate decision-making,
- C. Responsibilities and duties of guardians,
- D. Legal processes of guardianship, and
- E. State certification of guardians.

○ **NGA Standard 4 – The Guardian's Relationship with Family Members and Friends of the Person**

I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.

- A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.
- B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

II. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence.

III. When disposing of the person's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).

IV. The guardian shall make reasonable efforts to preserve property designated in the

- person's will and other estate planning devices executed by the person.
- V. The guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.
 - VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The guardian may request and consider family input when making medical decisions.

Note: Refer to Standard 11 as it relates to confidentiality issues.

○ **NGA Standard 5 – The Guardian’s Relationship with Other Professionals and Providers of Service to the Person**

- I. The guardian shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation on behalf of the person.
- II. The guardian shall develop and maintain a working knowledge of the services, providers and facilities available in the community.
- III. The guardian shall stay current with changes in community resources to ensure that the person under guardianship receives high-quality services from the most appropriate provider.
- IV. A guardian who is not a family member guardian may not provide direct service to the person. The guardian shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.
- V. The guardian shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person.
- VI. The guardian shall make a good faith effort to cooperate with other surrogate decision-makers for the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee.
- VII. The guardian may consider mentoring new guardians.

○ **NGA Standard 6 – Informed Consent**

- I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent.
- II. Informed Consent is an individual’s agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
- III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.
- IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.

- V. In evaluating each requested decision, the guardian shall do the following:
- A. Have a clear understanding of the issue for which informed consent is being sought,
 - B. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
 - C. Determine the conditions that necessitate treatment or action,
 - D. Encourage and support the person in understanding the facts and directing a decision,
 - E. Maximize the participation of the person in making the decision,
 - F. Determine whether the person has previously stated preferences in regard to a decision of this nature,
 - G. Determine why this decision needs to be made now rather than later,
 - H. Determine what will happen if a decision is made to take no action,
 - I. Determine what the least restrictive alternative is for the situation,
 - J. Obtain a second medical or professional opinion, if necessary,
 - K. Obtain information or input from family and from other professionals, and
 - L. Obtain written documentation of all reports relevant to each decision.

○ **NGA Standard 7 – Standards for Decision-Making**

- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.
- II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.
 - A. First, the guardian shall ask the person what he or she wants.
 - B. Second, if the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
 - C. Third, only when the person, even with assistance, cannot express his or her goals and preferences, shall the guardian seek input from others familiar with the person to determine what the individual would have wanted.

- D. Finally, only when the person's goals and preferences cannot be ascertained, may the guardian make a decision in the person's best interest.

III. Substituted Judgment

- A. Substituted Judgment is the principle of decision-making that substitutes the decision the person would have made when the person had capacity as the guiding force in any surrogate decision the guardian makes.
- B. Substituted Judgment promotes the underlying values of self-determination and well-being of the person.
- C. Substituted Judgment is not used when following the person's wishes would cause substantial harm to the person or when the guardian cannot establish the person's goals and preferences even with support.

IV. Best Interest

- A. Best Interest is the principle of decision-making that should be used only when the person has never had capacity, when the person's goals and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- B. The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
- C. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

○ **NGA Standard 8 – Least Restrictive Alternative**

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety.
- III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
 - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.

- B. The guardian shall strive to know the person's goals and preferences.
- C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

○ **NGA Standard 9 – Self-Determination of the Person**

- I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the person.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.
- IV. The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.
- V. The guardian shall wherever possible, seek to ensure that the person leads the planning process; and at a minimum to ensure that the person participates in the process.

○ **NGA Standard 10 – The Guardian's Duties Regarding Diversity and Personal Preferences of the Person**

- I. The guardian shall determine the extent to which the person under guardianship identifies with particular ethnic, religious, and cultural values. To determine these values, the guardian shall also consider the following:
 - A. The person's attitudes regarding illness, pain, and suffering,
 - B. The person's attitudes regarding death and dying,
 - C. The person's views regarding quality of life issues,
 - D. The person's views regarding societal roles and relationships, and
 - E. The person's attitudes regarding funeral and burial customs.
- II. The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, that the person is not victimized, and that an environment conducive to this expression in privacy is provided.

- A. The guardian shall ensure that the person has information about and access to accommodations necessary to permit sexual expression to the extent the person desires and to the extent the person possesses the capacity to consent to the specific activity.
- B. The guardian shall take reasonable measures to protect the health and well-being of the person.
- C. The guardian shall ensure that the person is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the person the level of protection appropriate to the person's lifestyle and ability, while considering the preferences of the person. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.
- D. The guardian shall protect the rights of the person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the person's values and customs.

○ **NGA Standard 11 - Confidentiality**

- I. The guardian shall keep the affairs of the person under guardianship confidential.
- II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.
- V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk. Such a refusal to disclose information must be reported to the court.

○ **NGA Standard 12 – Duties of the Guardian of the Person**

- I. The guardian shall have the following duties and obligations to the person under guardianship unless the order of appointment provides otherwise:
 - A. To see that the person is living in the most appropriate environment that addresses the person's goals, needs, and preferences.
 - 1. The guardian shall have a strong priority for home or other community-based settings, when not inconsistent with the person's goals and preferences.
 - 2. The guardian shall authorize moving a person to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the person and serves the overall best interest of the person.

3. The guardian shall consider the proximity of the setting to those people and activities that are important to the person when choosing a residential setting.
 4. At a minimum the guardian shall report to a court before a move to a more restrictive residential setting, and the justification for the move.
 5. When the guardian considers involuntary or long-term placement of the person in an institutional setting, the bases of the decision shall be to minimize the risk of substantial harm to the person, to obtain the most appropriate placement possible, and to secure the best treatment for the person.
- B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the person.
 - C. To make reasonable efforts to secure for the person medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the person's potential for self-reliance and independence.
 - D. To keep the affairs of the person confidential, except when it is necessary to disclose such affairs for the best interests of the person.
 - E. To seek specific judicial authority when a civil commitment, the dissolution of a marriage, or another extraordinary circumstance is being addressed.
 - F. To file with the court, on a timely basis but not less often than annually, all reports required by state statute, regulations, court rule, or the particular court pursuant to whose authority the guardian was appointed.
 - G. To adhere to the requirements of Standard 17 - Duties of the Guardian of the Estate and Standard 18 - Guardian of the Estate: Initial and Ongoing Responsibilities, to the extent that the guardian of the person has been authorized by the court to manage the person's property.
 - H. To petition the court for limitation or termination of the guardianship when the person no longer meets the standard pursuant to which the guardianship was imposed, or when there is an effective alternative available.
 - I. To promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statutes.

○ **NGA Standard 13 – Guardian of the Person: Initial and Ongoing Responsibilities**

- I. With the proper authority, initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the person under guardianship that require immediate action.

- B. The guardian shall meet with the person as soon after the appointment as is feasible. At the first meeting, the guardian shall:
 - 1. Communicate to the person the role of the guardian;
 - 2. Explain the rights retained by the person;
 - 3. Assess the person's physical and social situation, the person's educational, vocational, and recreational needs, the person's preferences, and the support systems available to the person; and
 - 4. Attempt to gather any missing necessary information regarding the person.
- C. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The guardian shall:
 - 1. Obtain an evaluation of the person's condition, treatment, and functional status from the person's treating physician or appropriate specialist, if a comprehensive medical evaluation was not completed as part of the petitioning process, or has not been done within the past year.
 - 2. Obtain a psychological evaluation, if appropriate.
 - 3. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts.
 - 4. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person.
- II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs and preferences of the person.
 - A. The plan shall emphasize a "person-centered philosophy."
 - B. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs and preferences of the person.
 - C. The plan must also address whether the person's finances and budget are in line with the services the person needs and are flexible enough to deal with the changing status of the person.
 - D. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
 - E. The plan must be based on a multidisciplinary functional assessment.

- F. The plan must be updated no less often than annually.
- III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:
- A. The person's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
 - B. All legal documents involving the person;
 - C. Advance directives;
 - D. A list of key contacts;
 - E. A list of service providers, contact information, a description of services provided to the person, and progress/status reports;
 - F. A list of all over-the-counter and prescribed medication the person is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication;
 - G. Documentation of all client and collateral contacts, including the date, time, and activity;
 - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the person;
 - I. The guardianship plan;
 - J. An inventory, if required;
 - K. Assessments regarding the person's past and present medical, psychological, and social functioning;
 - L. Documentation of the person's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
 - M. A photograph of the person.
- IV. The guardian shall visit the person no less than monthly.
- A. The guardian shall assess the person's physical appearance and condition and assess the appropriateness of the person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
 - B. The guardian shall maintain substantive communication with service providers, caregivers, and others attending to the person.
 - C. The guardian shall participate in all care or planning conferences concerning the

residential, educational, vocational, or rehabilitation program of the person.

- D. The guardian shall require that each service provider develop an appropriate service plan for the person and shall take appropriate action to ensure that the service plans are being implemented.
- E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the person at the place of residence and at any program site to ascertain that the care plan is being properly followed.
- F. The guardian shall advocate on behalf of the person with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the person, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.
- G. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the individual's current goals, needs and preferences, including but not limited to:
 - 1. Evaluating the plan;
 - 2. Enforcing residents' rights, legal and civil rights; and
 - 3. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person.
- V. The guardian shall fully identify, examine, and continue to seek information regarding options that will fulfill the person's goals, needs, and preferences.
 - A. Guardians shall take full advantage of professional assistance in identifying all available options for long term services and supports.
 - B. Sources of professional assistance include but are not limited to area agencies on aging, centers for independent living, protection and advocacy agencies, long-term care ombudsmen, developmental disabilities councils, aging and disability resource centers, and community mental health agencies.
- VI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- VII. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.

○ **NGA Standard 14 – Decision-Making About Medical Treatment**

- I. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship.

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- II. The guardian shall ensure that all medical care for the person is appropriately provided and that the person is treated with dignity.
- III. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care decision-making.
- IV. The guardian, in making health care decisions or seeking court approval for a decision, shall:
 - A. Maximize the participation of the person,
 - B. Acquire a clear understanding of the medical facts,
 - C. Acquire a clear understanding of the health care options and the risks and benefits of each option, and
 - D. Encourage and support the individual in understanding the facts and directing a decision.
- V. Use the substituted judgment standard with respect to a health care decision unless the guardian cannot determine person's prior wishes.
- VI. The guardian shall determine whether the person, before the appointment of a guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts. On finding such documents, the guardian shall inform the court and other interested parties of the existing health care documents.
- VII. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian.
- VIII. If the person's preferences are unknown and unascertainable, the guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the person's welfare, to determine the person's best interests, which determination shall include consideration of consequences for others that an individual in the person's circumstances would consider.
- IX. Absent an emergency or the person's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the person's wishes with respect to a medical intervention, a guardian who has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria listed in Standards 6 and 7.
- X. In the event of an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7, within the time allotted by the emergency.
- XI. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the person. The guardian shall obtain a second opinion from an independent physician.

- XII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.
- XIII. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- XIV. The guardian may not authorize extraordinary procedures without prior authorization from the court unless the person has executed a living will or durable power of attorney that clearly indicates the person's desire with respect to that action. Extraordinary procedures may include, but are not limited to, the following medical interventions:
 - A. Psychosurgery,
 - B. Experimental treatment,
 - C. Sterilization,
 - D. Abortion, and
 - E. Electroshock therapy.
- XV. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care, unless not in accordance with the person's preferences and values.
- XVI. The guardian shall keep individuals that are important to the person reasonably informed of important health care decisions.

○ **NGA Standard 15 – Decision-Making About Withholding and Withdrawal of Medical Treatment**

- I. The NGA recognizes that there are circumstances in which, with the approval of the court if necessary, it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of the person under guardianship. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the person.
- II. If the person had expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, the guardian shall follow the wishes of the person. If the person's current wishes are in conflict with wishes previously expressed when the person had capacity, the guardian shall have this ethical dilemma reviewed by an ethics committee and if necessary, submit the issue to the court for direction.
- III. When making this decision on behalf of the person, the guardian shall gather and document information as outlined in Standard 6 and shall follow Standard 7.

○ **NGA Standard 16 – Conflict of Interest: Ancillary and Support Services**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing, and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
 - A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.
 1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.
 2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
 3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.
 - B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
 - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
 - D. The guardian may not be in a position of representing both the person and the service provider.
 - E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
 - F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.

- G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
- H. The guardian shall neither solicit nor accept incentives from service providers.
- I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.
- J. A guardian who is an attorney or employs attorneys may provide legal services to a person only when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.
- K. The guardian may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to the person under the guardianship, and shall disclose such transactions to interested parties and obtain prior court approval.

○ **NGA Standard 17 – Duties of the Guardian of the Estate**

- I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.
- II. When making decisions the guardian shall:
 - A. Give priority to the goals, needs and preferences of the person, and
 - B. Weigh the costs and benefits to the estate.
- III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.
- IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.
- V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.
- VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.
- VII. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- VIII. The guardian shall provide competent management of the person's property and, shall supervise all income and disbursements of the estate.

- IX. The guardian shall manage the estate only for the benefit of the person.
- X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.
- XII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets.
- XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.
- XIV. The guardian shall employ prudent accounting procedures when managing the estate.
- XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.
- XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statute.

○ **NGA Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities**

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
 - 1. The guardian shall ascertain the income, assets, and liabilities of the person.
 - 2. The guardian shall ascertain the goals, needs and preferences of the person.
 - 3. The guardian shall coordinate and consult with others close to the person.
 - B. The guardian shall meet with the person under guardianship as soon after the appointment as feasible. At the first meeting the guardian shall:
 - 1. Communicate to the person the role of the guardian;
 - 2. Outline the rights retained by the person and the grievance procedures available;

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3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity; and
 4. Attempt to gather from the person any necessary information regarding the estate.
- II. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.
- III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.
 - A. Guardian shall value the well-being of the person over the preservation of the estate.
 - B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.
 - C. The financial plan shall emphasize a “person-centered philosophy”.
- IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.
- V. The guardian shall obtain all public and insurance benefits for which the person is eligible.
- VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VII. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.
- VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.
- IX. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.
- X. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
- XI. The guardian may monitor, provide oversight or manage the personal allowance of the person.
- XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

○ **NGA Standard 19 – Property Management**

- I. The guardian may not dispose of real or personal property of the person under guardianship without judicial, administrative, or other independent review.
- II. In the absence of reliable evidence of the person's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the person, or an interest in that property, unless doing so is in the best interest of the person.
- III. In considering whether to dispose of the person's property, the guardian shall consider the following:
 - A. Whether disposing of the property will benefit or improve the life of the person,
 - B. The likelihood that the person will need or benefit from the property in the future,
 - C. The previously expressed or current desires of the person with regard to the property,
 - D. The provisions of the person's estate plan as it relates to the property, if any,
 - E. The tax consequences of the transaction,
 - F. The impact of the transaction on the person's entitlement to public benefits,
 - G. The condition of the entire estate,
 - H. The ability of the person to maintain the property,
 - I. The availability and appropriateness of alternatives to the disposition of the property,
 - J. The likelihood that property may deteriorate or be subject to waste, and
 - K. The benefits versus the liability and costs of maintaining the property,
- IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.
- V. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

○ **NGA Standard 20 – Conflict of Interest: Estate, Financial, and Business Services**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

- II. Rules relating to specific situations that might create an impropriety or conflict of interest include the following:
- A. The guardian may not commingle personal or program funds with the funds of the person, except as follows:
 - 1. This standard does not prohibit the guardian from consolidating and maintaining a person's funds in joint accounts with the funds of other persons.
 - 2. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.
 - 3. When an individual or organization serves several persons, it may be more efficient and more cost-effective to pool the individual estate funds in a single account. In this manner, banking fees and costs are distributed, rather than being borne by each estate separately.
 - 4. If the court allows the use of combined accounts, they should be permitted only where the guardian has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.
 - B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
 - C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above.
 - D. The guardian may not loan or give money or objects of worth from the person's estate unless specific prior approval is obtained.
 - E. The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained and a reasonable showing is made that such support is consistent with the person's goals, needs and preferences and will not substantially harm the estate.
 - F. The guardian may not borrow funds from, or lend funds to, the person unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the person's benefits, and the transaction is approved by the court.
 - G. The guardian may not profit from any transactions made on behalf of the person's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

○ **NGA Standard 21 – Termination and Limitation of Guardianship**

- I. Limited guardianship of the person and estate is preferred over a plenary guardianship.
- II. The guardian shall assist the person under guardianship to develop or regain the capacity to manage his or her personal and financial affairs.
- III. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
 - A. When the person has developed or regained capacity in areas in which he or she was found incapacitated by the court,
 - B. When less restrictive alternatives exist,
 - C. When the person expresses the desire to challenge the necessity of all or part of the guardianship,
 - D. When the person has died, or
 - E. When the guardianship no longer benefits the person.

○ **NGA Standard 22 – Guardianship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. The guardian shall:
 - A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action,
 - B. Disclose a projection of annual fiduciary fees within 90 days of appointment,
 - C. Disclose fee changes,
 - D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment, and
 - E. Disclose a detailed explanation for any claim for fiduciary fees.
- V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.

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- VI. A guardian may seek payment of fiduciary fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance and health care insurance premiums.
- VII. Factors to be considered in determining reasonableness of the guardian's fees include:
- A. Powers and responsibilities under the court appointment;
 - B. Necessity of the services;
 - C. The request for compensation in comparison to a previously disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity;
 - D. The guardian's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment;
 - E. The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken;
 - F. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;
 - G. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered the service better, cheaper, faster;
 - H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs;
 - I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate;
 - J. The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter;
 - K. The degree of financial or professional risk and responsibility assumed;
 - L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement; and
 - M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest.

- VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:
- A. Date and time spent on a task,
 - B. Duty performed,
 - C. Expenses incurred,
 - D. Collateral contacts involved, and
 - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).
- IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

○ **NGA Standard 23 – Management of Multiple Guardianship Cases**

- I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.
- II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.
 - A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.
 - B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

○ **NGA Standard 24 – Quality Assurance**

- I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.
- II. The independent review shall occur periodically, but no less often than every two years, and must include a review of a representative sample of cases.
- III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the person and with the individual providing direct service to the person.
- IV. An independent review may be obtained from:

A court monitoring system,

- A. An independent peer, or
 - B. An CGC national master guardian.
- V. The quality assurance review does not replace other monitoring requirements established by the court.

○ **NGA Standard 25 – Sale or Purchase of a Guardianship Practice**

- I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.
- II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.
- III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:
 - A. A professional guardian considering the sale of a guardianship practice shall ensure that the persons are considered in the sale process and that guardianship responsibilities continue to be met during the transition.
 - B. The professional guardian shall require documentation of the purchaser's references pertaining to qualifications to serve as guardian, as defined by state statutes.
 - C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons is not appropriate.
 - D. The sale price for the guardianship practice must not be the sole consideration in selecting the purchaser.
 - E. The professional guardian shall provide formal written notice of the proposed sale to the court, to the persons, and to other interested parties, even if not required by state statutes.
 - F. Consideration should be given to requesting that the court appoint a guardian ad litem, or another third party reviewer, to protect the interests of the persons.
 - G. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons during the period of the sale and transfer of ownership.
 - H. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.
 - I. The fees charged to existing persons may not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.

Standards of Practice, National Guardianship Association

- IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice may not be considered a sale or purchase under this standard.

Definitions

ADVANCE DIRECTIVE - A written instruction, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his or her desires.

ADVOCATE - To assist, defend, or plead in favor of another.

ARM'S-LENGTH RELATIONSHIP - A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both.

BEST INTEREST - The course of action that maximizes what is best for a person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the person.

CAPACITY - Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one's acts. (Black's)

CONFLICT OF INTEREST - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

COURT - An arm of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. (Black's)

COURT ORDER - A legal document issued by the court and signed by a judge. Examples include a letter of guardianship spelling out directions for the care of the person and the estate and an authorization or denial of a request for action.

COURT-REQUIRED REPORT - A report that the guardian is required by statute or court order to submit to the court relative to the guardianship.

DESIGNATION OF GUARDIAN - A formal means of nominating a guardian before a guardian is needed.

DIRECT SERVICES - These include medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

ESTATE - Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

EXTRAORDINARY MEDICAL CIRCUMSTANCE - Includes abortion, removal of life support, sterilization, experimental treatment, and other controversial medical issues.

FIDUCIARY - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

FREESTANDING ENTITY - An agency or organization that is independent from all other agencies or organizations

FUNCTIONAL ASSESSMENT - A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

GUARDIAN – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

Conservator is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.

Emergency/Temporary Guardian is a guardian whose authority is temporary and who is usually appointed only in an emergency.

Foreign Guardian is a guardian appointed in another state or jurisdiction.

Guardian of the Estate is a guardian who possesses any or all powers and rights with regard to the property of the individual.

Guardian of the Person is a guardian who possesses any or all of the powers and rights granted by the court with regard to the personal affairs of the individual.

Limited Guardian is a guardian appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.

Plenary Guardian is a person appointed by the court to exercise all delegable rights and powers of the person after the court finds the person lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

Pre-Need Guardian is a guardian who is formally nominated before a guardian is needed.

Standby Guardian is a person, agency, or organization whose appointment as guardian becomes effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.

Successor Guardian is a guardian who is appointed to act upon the death or resignation of a previous guardian.

INFORMED CONSENT - A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

LEAST RESTRICTIVE ALTERNATIVE - A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

PERSON UNDER GUARDIANSHIP OR SIMPLY "PERSON" - A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Conservatee, Disabled Person, Protected Person, Incapacitated Person and Ward.

PERSON-CENTERED PLANNING¹ - A family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand and clearly describe the unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- Is supported in a web of relationships, both natural and paid, within their communities.

PRUDENT INVESTOR RULE - All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and the guardian who does not use risk-reducing strategies may be penalized. Under most circumstances, the person's assets must be diversified. The guardian is obligated to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk. The possible effects of inflation must be considered as part of the investment strategy. The guardian shall either demonstrate investment skill in managing assets or shall delegate investment management to another qualified party.

SELF-DETERMINATION - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

SOCIAL SERVICES - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

SUBSTITUTED JUDGMENT - The principle of decision-making that requires implementation of the course of action that comports with the individual person's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

¹ Personal communication with Michael Smull, Mary Lou Bourne & Leigh Ann Kingsbury, Support Development Associates, LLC (May 2, 2012). See Michael Smull, The Learning Community for Person Centered Practices, www.learningcommunity.us (April 2012). See also John O'Brien & Connie Lyle O'Brien, eds., *A Little Book About Person Centered Planning*, Inclusion Press (2000).

NGA and CGC Qualifications for Court-Appointed Guardians

Corporate Guardian - A corporate guardian is a corporation that is named as guardian for an individual and may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities, and nonprofit entities.

Guidelines:

A corporate guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national certified guardians and national master guardians.

Family Guardian - A family guardian is an individual who is appointed as guardian for a person to whom he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective person, the court prefers to appoint the family member as guardian. On court approval, a family guardian may receive reasonable compensation for time and expenses relating to care of the person.

Guidelines:

A family guardian:

1. Is encouraged to recognize the resources available through the NGA.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice* when carrying out guardianship responsibilities.

Individual Professional Guardian - An individual professional guardian is an individual who is not related to the person by blood or marriage and with court approval may receive compensation in his or her role as guardian. He or she usually acts as guardian for two or more individuals.

Guidelines:

An individual professional guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to become a national certified guardian and national master guardian, if applicable.

National Master Guardian - A national master guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national master guardian:

1. Shall meet the Master guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice*.

Public Guardian - A public guardian is a governmental entity that is named as guardian of an individual and may receive compensation in its role as guardian with court approval. Public guardians may include branches of state, county, or local government.

Guidelines:

A public guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national registered guardians and national master guardians.

National Certified Guardian - A national certified guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national certified guardian:

1. Shall meet the National certified guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice*.
4. Should strive to become a national master guardian.

Volunteer Guardian - A volunteer guardian is a person who is not related to the person by blood or marriage and who does not receive any compensation in his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval.

Guidelines:

A volunteer guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Is encouraged to become a national certified guardian and national master guardian, if applicable.



COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2.1 STANDARDS FOR AGENCIES AND
PROGRAMS PROVIDING
GUARDIANSHIP SERVICES

The Colorado Office of Public Guardianship adopts the National Guardianship Association Standards for Agencies and Programs Providing Guardianship Services.

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Standards for Agencies and Programs Providing Guardianship Services

Adopted 2007

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National Guardianship Association

Acknowledgements

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Preamble

Guardianship is a delegated judicial function that entails a high responsibility to achieve stability or improve the life of a vulnerable adult. In that sense, all guardians owe the person under guardianship the highest allegiance and must operate in an open and ethical manner. Providing guardianship services for a fee heightens the need to assure quality service delivery.

The National Guardianship Association's purpose in this document is to provide guidance for programs striving to provide quality guardianship services. There are many different types of entities delivering these services across the country. Some of these agencies are private (for profit or not for profit) and some are governmental. Some of these are very small and locally focused. Others are statewide. There is great diversity among agency models. This document is not intended to be all encompassing or prescriptive. The standards are written broadly, so that the principles may be applied to any agency or program, regardless of its size or structure. While aspirational, the standards convey good business practice that agencies and states should consider adopting into policy or law.

The National Guardianship Association (NGA) has previously adopted a "Ethical Principles" and has defined Standards of Practice for the day-to-day provision of guardianship services that expand on the code's ethical base. Those ethics and standards apply to all guardians whether professional guardians, volunteer guardians or family members. This document defines additional NGA standards for acceptable business practice and program design for non-family guardians who are developing or operating agencies or programs providing professional guardianship services.

NGA defines a guardianship "agency" or "program" as any business or public entity performing as court appointed guardian, whether salaried public employee or for a fee, for individuals who are not related to those providing the services. The agency or program has a fiduciary relationship with and is under a legal duty to act in the best interest of the client, who is the principal in the agency relationship. It may be a free standing agency or a program within a larger service entity. The services may be supported financially through grants, contracts with state or local government entities, by fee for service to the estates of the individuals served, or any combination of those mechanisms. The agency standards are also intended to include those programs providing guardianship through the recruitment and training of citizen volunteers who receive court appointment, and function with supervision from professional guardians or agencies. In some cases if the program more closely resembles a "sole practitioner" design rather than an organization, the program may wish to use individual certification (Registered or Master Guardian) rather than the agency certification process defined in this document.

Like the NGA Standards of Practice, these Agency standards constitute what is considered best practice in guardianship at this time. As a living document, these standards may evolve over time as agencies and programs implement them. The NGA Ethics and Standards committee will continue to monitor this document and will refine the standards as necessary.

Standards of Practice for Agencies and Programs Providing Guardianship Services

Standard on NGA Ethics and Standards of Practice¹

I. Standard: Agency/program managers shall demonstrate a working knowledge of the “Ethical Principles for Guardians” and the National Guardianship Association [NGA] Standards of Practice, and shall develop and utilize policies and procedures that reflect the commitment to those standards as well as to the agency standards presented here.

[Intent Statement]: The Ethical Principles presents the philosophy of guardianship followed by the National Guardianship Association. The Standards of Practice outline principles that are NGA ideals for service delivery, and are indicated as current, but evolving “best practice.” Statements of principle are necessary because guardianship services involve the loss of an individual’s fundamental rights. These NGA documents define guardianship as a service that owes full allegiance to the persons served and to their right to positive influence over the life the person desires and finds satisfying, that recognizes the values, contributions (current and potential) by the person served to that person’s communities, and to be supported in a web of relationships, both natural and paid, within the person’s communities, and assisted in the least restrictive, least intrusive way that will meet their needs.

Historically, guardianship has focused on asset preservation more than on person-centered planning, decision making and preservation of the rights of the individual who is the subject of the guardianship. The NGA “best practice” approach focuses on a person-centered philosophy and the guardian’s duty to recognize and respond to the person as an individual with needs, desires and the potential for growth. To fulfill these responsibilities, it is the duty of the guardian to learn as much as possible about:

- 1) the individual’s personal history, culture and family background,
- 2) person-centered planning,
- 3) responsibilities and duties of guardians,
- 4) legal processes of guardianship,
- 5) state certification of guardians,
- 6) alternatives to guardianships and promoting where appropriate supported decision making prior to guardianship

Individual programs may vary in their ability to adhere to these standards in detail. Not all agencies and programs will be able to fully meet all of the Standards of Practice. There may be instances where the service is not provided, or cannot be provided exactly as the standard outlines. Specific state law may mandate variance from a requirement. Other variations in a state’s resources or social service delivery system may affect the design and operation of a particular agency or program. In cases where outside resources, state law, or other factors dictate variance from a standard, the agency/program should indicate in writing the reason for varying from that standard.

Ethical Principles

These principles have been updated to reflect the recommendations from the Third National Guardianship Summit.

II. Operating Standards:

A. Standards on the Governing Authority

1. Standard on Legal Status: The agency or program shall identify in writing its status as a legal entity (i.e. for-profit, not for profit, public agency, subsidiary of a larger entity, sole proprietorship, or other organization) and the decision-making process to determine agency policy.
2. Applicable state law should be identified. If there is a policy-making board, the entity shall assure diversity in its membership and describe in writing the desired composition of that board.
3. If there is no policy-making board, or the board is advisory only, the agency or program must identify the ultimate authority for decision making in the organization.

[Intent Statement]: The leadership of the agency or program must establish its mission and policy and must oversee implementation. It is important to articulate the mission and goals of the organization and to identify the position with ultimate responsibility for overseeing sound business and program practice. The chief executive in charge of and responsible for the organization must be identified as well as how that position relates to the governing board, if there is one. Relationships must be defined in agency policy for the entity to function effectively (such as an organizational chart or job description).

B. Standards for a governing board: If a board structure is chosen, its functions shall be identified in writing and by policy. The board shall set:

1. Guidelines concerning board member attendance
2. Criteria that would require the members to abstain from voting due to conflicts of interest.
3. The Board shall have the authority to approve the agency budget.
4. The Board shall oversee program outcomes.
5. The Board shall receive the independent financial review results when completed.
6. To carry out those duties, new board members must receive an orientation to the mission and policies of the organization.
7. If the board receives compensation for its services, the amount and justification for that compensation must be defined.
8. The board members should be given a copy of these standards and "Ethical Principles for Guardians" and the National Guardianship Association [NGA] Standards of Practice, as well as any applicable state or local standards and ethics policies, to familiarize them with the applicable standards and code of conduct for a guardian.

[Intent Statement]: To be an effective decision making body, an operating board must have access to information about how the agency or program goes about achieving its mission. The board must be aware of situations that might place board members in a conflict of

interest and must assure that members agree to avoid such situations. The board must have the authority and the expertise, both financial and programmatic, to review and approve or question aspects of the operation and must obtain an independent financial audit at least every three years, with annual fiscal reviews in interim years. The board should not receive unreasonable compensation that dilutes the agency's ability to provide high quality services to its clients.

C. Standard on Programs within Larger Entities: If the guardianship program is housed within a larger agency:

1. It must be at arms length and function independently.
2. The program must be independent from those providing other services to the same clientele.
3. The guardianship division shall have decision-making ability independent of the other service divisions.
4. The guardianship division must have clearly delineated strategies for avoiding conflicts of interest.
5. The guardianship division will scrupulously examine direct service costs and assure that it requests the most appropriate, least costly provider for direct services to its the person under guardianship.
6. If a direct service or group of services is provided to a person under guardianship for additional fees, the guardian must disclose that to the appointing court.
7. Where appropriate and feasible the guardian must obtain court approval of those fees.

[Intent Statement]: Housing guardianship services within an agency that also provides direct services to the same individuals is not recommended because the important advocacy function of the guardian is impacted by that design. Standard 16 of the NGA Standards of Practice requires that "the guardian shall not be in a position of representing both the person under guardianship and the service provider." It further prohibits the provision of housing, medical, legal, or other direct services to the person under guardianship, except as a last resort. There are very real dilemmas and ethical pressures inherent in guardianship work. It is imperative that the guardian not be intimidated or in a subordinate position to others providing direct service to the persons under guardianship. It is also important that the guardian avoid any appearance of impropriety or self-dealing in obtaining services from the agency which houses the guardianship service. The guardian's ability to advocate, including the ability to sue on the individuals behalf, may be negatively affected when the agency is also the direct service provider. Where this situation cannot be avoided, there must be some neutral oversight provided. Where a guardianship agency is under the jurisdiction of another agency which may pose a conflict of interest or perceived conflict of interest, there should be a memorandum of understanding with an appeal process to resolve any conflict. The guardian should provide evidence of costs and justification for those fees in the information provided to the court, and seek its approval if appropriate.

III. Personnel Standards: *The agency/program managers shall:*

A. *Employ competent staff with the training and experience to provide quality service to the individual.*

B. Agency management shall recruit, train, and retain personnel who meet the identified needs of the individuals receiving service and contribute to the organization's mission.

1. Program Staff: The agency/program managers shall have a written policy that assures there is sufficient qualified staff to provide services to each individual, taking into consideration that there may be periods of insufficient staff support.

[Intent Statement]: The agency/program managers shall assure that adequate program staffing levels are identified and maintained. These staffing levels will be dependent upon the type of guardianship and other services provided. Adequate staff to client ratios must be established to assure that access to and implementation of person-centered decision making is not impaired or delayed. The design of caseload assignments should include not only the guardian caseworker, but also the number of support staff required to fully support the case. Creative use of support staff such as bookkeepers, property managers, guardian assistants and volunteers can lessen the caseworkers' workload and enable them to spend more time with the persons under guardianship. The addition of an Information Specialist to help upgrade technology may be justified. The agency may also need to develop and document a process for caseload weighting to assure that complex cases do not overwhelm individual guardian caseworkers and that less active cases are not neglected.

2. Hiring Practices: The agency/program managers shall operate utilizing federal regulations on non-discrimination in hiring practices:
 - a. The agency/program will have written policy that assures that prospective staff references are checked and that those hired have at least the minimum education, training and experience to serve the program's clientele.
 - b. All applicants for employment must undergo a criminal background and abuse registry check and any other screenings such as a credit check and drug testing that comply with state law.
 - c. If an agency recruits and trains volunteers to be guardians, they, too, must provide references and submit to the same background checks as paid staff.

[Intent Statement]: All staff should have the qualifications to perform the functions identified in their job descriptions and any applicable licensure or educational requirements for their positions. There must be an identified process for verification of education, work experience and reference checks. The agency or program shall assure that current licenses and educational documents are on file. Finally, guardianship is a fiduciary relationship and persons who are served by guardians are often vulnerable. Criminal background reports must be obtained to prevent the employment of inappropriate individuals. The agency/program managers are encouraged to require recurring background checks on a periodic basis to be sure persons under employment remain qualified to serve in their positions.

3. Orientation Training: The agency/program managers shall identify the structure or protocols for training new staff by written policy

and assure that all new staff is provided with orientation to the program services and philosophy of that service.

[Intent Statement]: Effective guardianship services cover complicated issues crossing many disciplines, based on the specific characteristics of the individuals served. The agency/program staff will be asked to make decisions that affect the daily lives of the individuals, their financial and personal well-being. Therefore, the management team must assure that new staff is well prepared *prior to* providing such services. The training curriculum for new staff should include at a minimum:

- NGA Standards of Practice for Guardians/ Ethical Principles
- NGA Agency Standards
- Fundamentals of Guardianship, Applicable Federal and State Law
- Characteristics of the population served
- Appropriate Terminology (i.e. "Person First" language, etc.)
- Active Listening Skills
- Overview of State and Local Social Services and Resources
- Agency/Program Policies and Procedures
- Protective Services Laws and Requirements
- Confidentiality and Decision-Making Ethics
- Medical decision-making

4. Continuing Education: The agency/program managers shall have a written policy that assures that all staff members and volunteers who become guardians attend a minimum number of hours of continuing education training applicable to their work on no less than an annual basis.

[Intent Statement]: Developments in medical, legal and social services occur rapidly and the staff delivering program services must have access to the latest information and training in areas affecting guardianship. The agency may provide some training hours in-house, but should look to outside sources as well. Some of the training should cover research-based information as the field continues to develop. A minimum number of annual training hours should be required for each staff person or volunteer delivering services directly to individuals. (For example, the Center for Guardianship Certification requires twenty hours over two years to maintain a professional certification as a Registered Guardian, or thirty hours over three years for a Master Guardian.)

5. Administrative and Support Staff Training: The agency/program managers shall have a written policy that assures that administrative and support staff members attend training on the program mission and the characteristics of the individuals served.

[Intent Statement]: It is likely that support staff will interact at times with the individuals served by the program. Even if they do not, it is important for the success of the program for these staff to identify with the mission and to learn the characteristics of those served, in order to enhance their ability to be effective in their support roles. Specifically, Reception and Fiscal staff interacting with individuals should also undergo training in the use of

“Person First” language and person-centered guardianship. This is the terminology preferred by the disability community, and refers to the person by name and then identifies a disability only if necessary (i.e., “person with schizophrenia, person who uses a wheelchair, etc.) These staff members should also receive training in active listening skills, techniques for calming an angry individuals and techniques in supported decision-making. Information on these topics should be available from program staff. This does not have to be external training.

6. Job Descriptions: The agency/program managers or governing board shall develop written job descriptions for all positions that identify the minimum qualifications for the position as well as its responsibilities. Job descriptions should be reviewed regularly and updated as needed.
7. Annual Appraisal: The agency/program managers shall have a written policy and utilize a specific process for appraising each employee’s performance.
 - a. Each person employed by the agency, including the agency director if there is an operating board, shall have a performance appraisal annually.
 - b. Regular, periodic supervision should be provided during the initial employment period for employees providing guardianship services to persons under guardianship.
 - c. Staff with state certification and/or certified as Registered or Master Guardians through the Center for Guardianship Certification should provide such supervision.

[Intent Statement]: In order to continually improve the quality of services provided to clients, the individuals providing those services must receive regular feedback and set goals for improving their skills on a regular basis. New program staff should have a series of sessions over the first six months of employment to confer with a supervisor regarding plans for the individuals served. The supervisor must review and mentor the employee to assure that there is an understanding of the NGA Standards of Practice and that the employee is applying them for the individual. Once the employee has successfully completed the initial employment period, the supervisor should review performance no less than annually in writing.

8. Use of Volunteers in Guardianship Programs: The agency/program managers shall have a written policy that:
 - a. Defines the role and job description of any volunteers used to support the person under guardianship.
 - b. Documents that it provides appropriate training, support, and technical assistance to them.

[Intent Statement]: There are many ways that dedicated volunteers can enhance the lives of the individuals served by the agency/program. While the problem of limited resources can be partially addressed by using volunteers, “volunteer” never equals “free.” It is true

that volunteers can fulfill many, if not all the roles of paid staff. However, volunteers also need support, supervision, job descriptions and a defined role with parameters. Volunteers may be guardians, with full powers, personally appointed by the court, after the agency trains and certifies them. Volunteers may also fill the role of guardian assistant, visitor, or other supportive services functions. In any of those roles, the volunteer is functioning as unpaid staff, and must follow the same agency/program policy and procedure as paid staff, as the procedures apply to their roles. Policies governing screening, background checks, and training apply equally to a volunteer filling a defined role, and the volunteer must also be subject to termination for poor performance. Volunteers must understand the fiduciary relationship, the Ethical Principles and the NGA Standards of Practice, and have received some training in person-centered decision making.

C. Certification Requirements for Program Staff:

1. At least one member of the management team shall hold certification from the Center for Guardianship Certification either as a Master Guardian, or be a Registered Guardian with a minimum of five years experience.
2. All professional guardianship staff having direct responsibility for persons under guardianship shall hold current state and/or national certification at the Registered Guardian level or be required to attain it within two years of their employment.

[Intent Statement]: Because curricula in social services, medical and legal fields do not generally include guardianship, certification from the Center for Guardianship Certification is necessary. The CGC is a testing and certification entity separate from the NGA that understands the philosophy and of NGA, and supports the effort to increase that understanding among practitioners. The program director should have certification at a minimum as a Registered Guardian, and must have at least five years' experience working in guardianship. It is preferred that the top program manager be certified at the Master Guardian level.

IV. Fiscal Standards: The agency/program managers shall maintain fiscal stability. Fiscal Standards shall follow the tenets of the NGA "Ethical Principles" and the NGA Standards of Practice. Agency/program management staff will assure that these principles guide the Fiscal Standards.

A. There shall be written policies that demonstrate that the organization is operating in accordance with Generally Accepted Accounting Principles.

B. These policies shall assure the organization operates in accordance with accepted business practices for a fiduciary and the requirements of applicable state law.

C. Fee Structure:

1. The agency/program shall have written policy regarding the source of its funding.

2. The agency/program shall have a written fee structure for services to individuals.

[Intent Statement]: Guardianship is a fiduciary relationship and fees for service should be open to scrutiny by the court or other government entities in a position of oversight of the agency or program, as well as to the public. Whether the agency is a public entity or a private one, the fiduciary nature of guardianship also requires that fees be reasonable for services rendered. To avoid the appearance of impropriety and any conflict of interest, the agency/program's policies concerning fees/funding must be consistent with the NGA Standards of Practice and be clear and open to public scrutiny.

D. Fiscal Controls: The agency/program managers shall demonstrate:

1. That the operation uses sound fiscal controls and Generally Accepted Accounting Principles.
2. The organization will arrange for an outside review/audit of the financial records of the agency by an independent entity periodically.
3. The results of the review/audit will be provided to the board or managing officers upon completion.

[Intent Statement]: Outside review or audit of the agency/program's fiscal situation provides the checks and balances necessary to assure good fiscal management. Whether it is conducted by a CPA or by a governmental entity, it should be separate from any group or entity with direct oversight responsibility for the agency/program to assure objectivity. The agency/program will demonstrate by board minutes or policy that action has been taken on exceptions noted by that fiscal review or audit. If the agency/program is audited by a governmental or funding entity already, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or board of directors.

E. Financial Agency Records: The agency/program managers shall demonstrate by written policy and practice that they operate within a system of internal controls that:

1. Govern receipts and disbursements.
2. Assure that funds for business/client operations are handled prudently.
3. Demonstrate that checks and balances are in place.
4. Retain fiscal records to reflect those practices.
5. The agency/program shall also demonstrate that it has obtained adequate insurance coverage for its business design.
6. The agency has sufficient bonding as required by state law.

[Intent Statement]: Operating on a sound fiscal basis helps to ensure the stability needed to meet the agency/program's fiduciary responsibilities to its clients. Using Generally Accepted Accounting Principles, and keeping records of those practices including payroll records, budgets, monthly financial reports, bank statements, accounts receivable and accounts payable, gives the management team the tools needed to track operations and

identify problems in a timely manner. Insurance policies must be comprehensive and include liability coverage for owners, staff, volunteers as well any of the board of directors. Insurance policies should be accessible and coverage should also be adequate to protect the organization. The organization must also be bonded at the amount required by state law and/or local court rule.

F. Client Financial Records: If the agency provides services as representative payee or as guardian of the estate, the agency/program managers shall demonstrate by written policy and practice that there is a system of internal controls to protect the funds of the persons for whom it provides daily money management or estate services. Policies will reflect that:

1. The entity provides separate accounts, or keeps separate ledgers if the accounts are pooled, for individuals served.
2. Applicable local, county, state and federal statutes and regulations are followed.
3. The agency/program adheres to the principles of the "Prudent Investor Rule" for managing estates. The agency/program managers have a goal to manage, but not necessarily eliminate risk.
4. The organization demonstrates a system of checks and balances so that client accounts are not accessible to unauthorized individuals.
5. At least every three years, an external audit of client financial records is conducted.
6. An identifiable client file is recommended.

[Intent Statement]: In addition to the programmatic responsibility for prudent management, the organization must demonstrate that it has taken steps and by policy protects the assets of the individuals it serves. There should be continuing dialogue between the program staff and any bookkeeping staff to assure continuity of money management services. There should be a policy and statement as to who is authorized to approve expenditures. Ideally guardian caseworkers will not write checks or handle client funds directly. There should be an approved group of staff with check signing privileges. There needs to be a system of verifying if goods and services were purchased or provided and they should be separate from those who generate the checks. An external auditor should audit client accounts no less than every three years. If the agency/program is audited by a governmental or funding entity already, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or board of directors.

G. Required Reports: The agency/program managers shall have a written policy and demonstrate that it is timely in submission of all required financial reports, including accountings, to the appointing court and to persons served by the guardianship service.

[Intent Statement]: The appointing authority is charged with monitoring the work of the guardian it appoints. The guardian has an affirmative duty to be timely and the agency/program seeking certification should be able to demonstrate effective, prudent

management of individual assets. Timeliness also indicates effective service delivery to the appointing authority.

V. Program Services Standards: Program design and operation shall follow the tenets of the NGA “Ethical Principles” and the NGA Standards of Practice. Agency/program management staff will assure that these principles guide program design and day-to-day services.

A. Clientele: The agency/program managers shall identify the individuals served and the type of service offered:

1. The program’s plan should include the criteria for acceptance.
2. The process used for a waiting list, if any, and the process for denying service if permitted by state law.
3. If the agency/program is appointed guardian of someone whose needs differ from the primary clientele, the organization shall consult with appropriate professionals to develop the capacity to provide informed consent for that individual.
4. The agency/program must develop a triaging system that identifies which referrals will be accepted as urgent.
5. The program plan should identify criteria that:
 - a. Would place an individual on a waiting list.
 - b. What referrals are inappropriate for the guardianship provided by the agency and
 - c. What referrals are inappropriate for guardianship but are appropriate for less restrictive alternatives.

[Intent Statement]: When the social services, legal or medical community finds a willing resource for guardianship, the agency/program may be overwhelmed with referrals. It is critically important to stability and the quality of service delivery, that the organization takes only those cases it has the expertise to handle. An agency that has expertise in serving a particular population will need to consult with appropriate experts if appointed guardian for an individual whose needs are different in type and scope from their other clientele. Service systems vary in their structure and services among the various populations who may need a guardian. If the person is an older adult with dementia, the service system may differ from that serving a young person with a developmental disability or a mental illness.

It is also likely that the organization will receive inappropriate referrals. Individuals who are described as making “poor” decisions, but who are competent, may be referred to another agency such as Adult Protective Services. An older adult in an acute hospital setting may be diagnosed with dementia, although the true condition is delirium. There must be procedure to guide staff in the situation where the referral is inappropriate, and in situations where the person has disabilities with which staff is unfamiliar. In a similar vein, if the organization provides estate management only, and staff credentials are primarily financial, the program should seek advice on meeting the personal needs of the individuals served, in order to develop the person’s financial plan.

B. Intake Process: The agency/program shall have written policy that assures that the intake process includes a thorough analysis of the individual referred while still respecting the person's right to confidentiality. Intake should include:

1. A functional assessment of the person's decisional capacity.
2. An investigation of the person's life circumstances including personal history and informal supports.
3. An investigation will be conducted to assure that the least restrictive\alternative is chosen to meet the person's personal and financial goals, needs, and preferences, and shall include to the extent possible consult with family members and friends.
4. If a court appoints the agency/program prior to such an assessment:
 - a. The guardian must then conduct its own investigation to determine if the appointment is appropriate, or if there is a less restrictive alternative.
 - b. If there is a way to meet the individual's needs that is less than full guardianship, the agency/program should bring that alternative to the attention of the appointing court.

[Intent Statement]: These NGA documents define guardianship; as a service that owes full allegiance to the persons served and to their right to positive influence – over the life the person desires and finds satisfying, that recognizes the values contributions (current and potential) by the person served to that person's communities, and to be supported in a web of relationships, both natural and paid, within the person's communities, and assisted in the least restrictive, least intrusive way that will meet their needs. Guardianship by its nature means removing rights from a client and, giving them to a third party. This legal step should not be taken without complete information. In many cases, competency can be retained in areas not covered by the authority given to a guardian. Limited guardianships, powers of attorney, informal support systems and representative payeeships are means of supporting an individual without removing all legal rights. To choose a less restrictive alternative, it is necessary to gather as much information as possible about the individual's functional capacities and supports. Utilizing this comprehensive approach to assessment enables the organization to serve the individual with the most appropriate mechanism and to include the individual in the decision-making process. In some states the law requires the use of multidisciplinary teams to assess an individual who is subject to a guardianship hearing. Usually one assessor must be a physician, but the team may also use geriatric nurses or social workers, psychologists and other specialists versed in the appropriate field. This gives a more comprehensive look at the person's ability to function. Many states continue to require only a medical evaluation. In those states, the agency/program must supplement the information with a more thorough background investigation that includes the individual's participation in a person-centered analysis in order to determine the most appropriate service.

In places where state law mandates it, or the design of the guardianship service allows the guardian to be appointed without its knowledge or review, the agency/program following the NGA Ethical Principles has an affirmative obligation to advocate for less restrictive

alternatives where they exist. The agency/program staff should still conduct an intake assessment, gathering the same information and working to identify the least restrictive, most appropriate intervention for the person chosen to meet the person's personal and financial goals, needs and preferences. If a less restrictive alternative is identified, the guardian should then approach the appointing court and seek a limited guardianship or identify other alternatives to meet the person's personal and financial goals, needs and preferences.

C. Case Assignment and Weighting Procedure: The agency/program managers shall identify in writing the process used for assigning caseloads to staff.

1. The assignment process shall be designed to assure that employees are able to effectively manage the cases and provide appropriate support for the individuals on that caseload.
2. The agency/program managers shall establish a caseload ratio and/or weighting system and make the commitment to maintain it.
3. The agency/program managers shall also have a plan to address what will be done if the ratio is exceeded.

[Intent Statement]: The amount of work and involvement in the life of a person under guardianship differs depending on the type of service provided and the personal and financial goals, needs and preferences of the individual. Factors such as geography, the type of case required, whether the person lives in a group setting, or in the community independently, all affect the difficulty of the caseload. Multiple, complex medical conditions may require more time from the guardian caseworker advocating for an individual than for someone whose health is stable. The time required in money management services can be extensive, if bookkeeping and clerical functions are also included. One key to the dilemma of case overload is to identify duties that can be delegated to well-trained support staff. It may be possible to assign functions to a bookkeeper or hire a property manager to free the time of the guardian caseworker and provide more individualized service to the person under guardianship. A pool of volunteers may be used to provide support services or to act as guardian for stable, uncomplicated cases. Guardian assistants may be used for some functions. However, the case assignment system is designed, it is critically important that the organization identify the best use of the time of its employees and provide enough support to assure that the individual under guardianship is regularly visited and has access to the most appropriate support and advocacy when it is needed.

D. Guardianship Plan Procedure: The agency/program managers shall have written policy and documentation of a process for planning services for the individual:

1. The guardian should develop a plan at the time of service initiation and update it at least annually thereafter.
2. The guardianship plan shall include an analysis of the person's strengths and abilities, needs and preferences.
3. It shall set goals for enhancing the quality of the person's life.
4. The guardianship plan should also address annually the continuing need for a guardian.

5. The guardianship plan will specify the steps needed to be taken to restore the individual's rights.
6. The guardianship plan may include a budget for the individual.

[Intent Statement]: Goals for service to the individual can assist caseworkers in targeting their efforts toward those activities that will enhance the quality of life of the person. What actions are needed and who will perform them will vary depending on the needs of the individual and should be identified at the beginning, in order to effectively manage the case. Goals written in a case plan also provide necessary continuity for the individual under guardianship when there is turnover, or the individual's guardian caseworker is unavailable due to illness or other extended absences. If the individual has become stable and regained capacity, the plan should include a process for ending the guardianship and restoring the person's rights. This is a case plan for the guardian's service to the person under guardianship, and is different from a mental health services, habilitation or other provider plan.

E. Guardian Supervision: The agency/program managers shall have written policy and document that they provide experienced supervision for all cases.

1. Guardianship caseworkers should have a schedule of case review on a quarterly basis to assure that the individual's goals are being addressed.
2. The primary program manager should be a Registered Guardian or functional equivalent under local law, with at least five years' experience in guardianship work. (Certification as a Master Guardian is preferred.)
3. Intermediate supervisors providing oversight shall be certified at the minimum with state and/or national certification such as a Registered Guardian from the Center for Guardianship Certification.
4. The agency/program managers should also establish an internal Ethics Committee process for decisions that are ethically complex or controversial.
 - a. The agency/program managers will review and be involved in the decision.
 - b. External Committees or Court direction may be sought as well.

[Intent Statement]: Regular, periodic case supervision provides assurance that the individuals under guardianship gain stability or improvement in their lives as a result of that intervention. The supervisor or program manager should hold certification at the state and/or national level, or be working on such certification. The lead program manager should hold certification as a Registered Guardian with at least five years experience in guardianship work or, preferably as a Master Guardian, from the Center for Guardianship Certification. Further, as the issues guardians face are often ethically complex, the agency should provide a way to share responsibility with guardian caseworkers for the most difficult decisions. The agency/program should have a mechanism to call an internal Ethics

committee meeting for caseworkers to obtain guidance when decisions are difficult, affect the fundamental well being of the person served, or are ethically complex. On rare occasions, some decisions may be so controversial or difficult that an external Ethics Committee should be consulted or a Request for Instruction should be filed with the appointing court.

F. Documentation, Confidentiality and Record Retention:

1. The agency/program managers shall have a written policy and procedure for documenting the case plan.
2. The procedure shall include actions taken for an individual under guardianship.
3. The individual file shall contain:
 - a. Complete assessment information (including a values history wherever possible).
 - b. The current case plan.
 - c. Documentation of visits and interactions with and on behalf of the person.
 - d. Legal petitions and letters of guardianship
 - e. Historical and current accountings
 - f. Correspondence
 - g. Other legal or medical records that are necessary for the care and efficient administration of the estate.
4. The agency/program shall have written policies and procedures for assuring:
 - a. The confidentiality of these records.
 - b. The disposal of records and a policy regarding record retention.
 - c. The management of the information within the parameters of relevant state and federal laws (i.e., HIPAA, IRS, etc.)

[Intent Statement]: The fiduciary relationship between the agency/program and the individual requires that clear documentation be kept of the actions taken on behalf of the person under guardianship. Appropriate statutes governing record retention and any court orders must be followed. The agency/program should have a process for controlling access to records and of culling and destroying personal information that complies with confidentiality requirements and protects against identity theft. There should be policies addressing the security of records and a system for documenting access to the file. There should also be a procedure governing the release of confidential information to others that conforms to applicable law.

G. Emergency Coverage Procedure: The agency/program managers shall have a written policy and assure that services are accessible after regular business hours, at night and on weekends.

1. The mechanism for such coverage shall be identified and have the capacity to respond immediately to the emergency needs of the individuals served.
2. Someone with the authority to make important decisions that protect and support the persons served must be available at all times should the need arise.

[Intent Statement]: Individuals served under guardianship may require emergency assistance. Emergencies will range from serious medical crises to eviction, to utility shut offs, depending on the nature of the legal relationship between the agency/program and the person. There must be a way for medical and other service providers to reach a decision maker in these situations. An individual under guardianship cannot give informed consent for treatment. A person whose estate is controlled by a guardian may need financial assistance on a weekend. The organization may choose a number of different strategies to establish coverage. Rotating staff "on-call" coverage, hiring a staff person to provide after-hours coverage or contracting with an answering service with the capacity to reach a program representative are some examples of methods that can be used to provide this coverage.

H. Client Funds Management: The agency/program managers shall have written policies and procedures that follow the tenets of the NGA "Ethical Principles" and the NGA Standards of Practice and:

1. Guarantee the safety of the funds managed for individuals served, if money management is one of the agency services.
2. The plan for use of the money shall include participation from the individual wherever possible.
3. The Plan will assure that the funds are used prudently to benefit the individual to the greatest degree possible.
4. The funds belong to the individual, however, and should not be hoarded, commingled or distributed to other persons under guardianship.
5. Staff will establish a budget to meet the basic safety and needs of the person.
6. The staff will make an effort to provide for special purchases or amenities if funds permit.
7. Reasonable efforts need be made to ascertain the individual's estate plan if allowed by the court or under applicable law.

[Intent Statement]: There is a natural tension between the controller of funds and the individual, especially when the individual has not entered into the arrangement voluntarily. The agency/program must have a system that guarantees the greatest degree of safety for any assets held in this trust relationship. The agency/program must also assure that the individual has access to funds in emergency situations and that the individual does not lack food, shelter or daily living necessities as a result of the agency's funds management

policies or practices. There should also be enough flexibility to encourage and assist the person to act on his or her own behalf and to participate in decisions, and to have wishes met, as well as basic needs, as funds permit. While saving and investing are positive goals, these activities should not override the person's ability to use some funds for recreation, leisure and other purchases for personal enjoyment if funds are available.

I. Required Reports: The agency/program managers shall demonstrate by policy and practice the timely submission of programmatic reports to the appointing court about the well-being of the person under guardianship, as required by state law and local court rule.

[Intent Statement]: The appointing authority is charged with monitoring the work of the guardian it appoints. The guardian has an affirmative duty to report on a timely basis, and the agency/program seeking certification should be able to document to the court its progress in achieving its goals to stabilize or improve the person's quality of life.

VI. Quality Improvement: The agency/program managers shall identify a plan in writing and document actions taken to improve the quality of its service delivery.

A. The organization shall undertake an internal program evaluation annually.

B. The organization will arrange to have an external program audit by an objective third party on a biennial basis.

C. If the agency/program is already required to undergo a program evaluation by a third party, the results of that evaluation may be considered to meet this requirement. The agency/program shall utilize the results of such program evaluations to improve the quality of its service delivery.

[Intent Statement]: Although the service is not voluntary, many individuals under guardianship may be able to articulate their feelings about the service. The agency/program should seek their input through an internal evaluation, as well as seek input from other stakeholders such as funding and referring agencies, courts, an advisory board, and/or family members. Additionally, the organization should seek out an independent third party who is clinically knowledgeable in the area of guardianship services to perform an external program evaluation. Ideally this would be conducted on a biennial basis. Where the program has outside programmatic assessments conducted periodically by a funding entity or other governmental unit, that program audit may be used to meet this requirement.

VII. Grievance Procedure: The agency/program managers shall have a written grievance procedure that includes:

A. The process to be followed including contact names and addresses;

B. Time Limits for filing and responding to grievances;

C. Provision for the grievant to obtain an advocate;

- D. Reasonable accommodations for those with communication impairments or who speak a language other than English;
- E. Requirement of a written response to the grievance.
- F. Contact information for the appointing court.

[Intent Statement]: Individuals under guardianship must be able to voice grievances and recommend changes in policies and services, free from restraint, interference, coercion and discrimination or reprisal. The loss of rights involved in the guardianship appointment makes this grievance process even more crucial in ethical service delivery. There may also be circumstances where the grievant is a family member, friend or service provider. Policy on how these will be addressed is a protection for the agency, as well. Where the grievance process fails to satisfy the grievant, information should be provided on how to contact the appointing court.

VIII. Critical Incidents: The agency/program managers shall have a written policy defining and determining how staff will respond to critical incidents.

- A. This policy shall entail responding to situations that bring harm to clients or staff or that cause a disruption of services.
- B. The policy should also include specific instructions about reporting suspected abuse, neglect or exploitation of a client to authorities in compliance with state law.
- C. The policy shall track critical incident reports to determine any trends that might need to be addressed.

[Intent Statement]: Knowing what to do in a crisis situation can alleviate the effects of such an event. To be proactive, the agency/program must monitor the work/service environment for the safety of clients and staff. A plan for response steps when a critical incident occurs can lessen the impact of the incident (i.e., fire, assault, serious injury or untimely death of staff or client.) Further, in many states guardianship caseworkers are "mandatory reporters" who must formally report suspected abuse or neglect. Staff should understand how the state's Adult Protective Service system works and when they are to report suspected client abuse to those authorities as well as to the agency/program managers.



COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2.2 ETHICAL PRINCIPLES

The Colorado Office of Public Guardianship adopts the National Guardianship Association Ethical Principles.

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National Guardianship Association Ethical Principles

1. A guardian treats the person with dignity. (Standard 3)
2. A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)
3. A guardian selects the option that places the least restrictions on the person's freedom and rights. (Standard 8)
4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
5. A guardian maximizes the self-reliance and independence of the person. (Standard 9)
6. A guardian keeps confidential the affairs of the person. (Standard 11)
7. A guardian avoids conflicts of interest and self-dealing. (Standard 16)
8. A guardian complies with all laws and court orders. (Standard 2)
9. A guardian manages all financial matters carefully. (Standard 18)
10. A guardian respects that the money and property being managed belong to the person. (Standard 17)

The term "guardian" includes all court-appointed fiduciaries. These Ethical Standards are reflected throughout the National Guardianship Association's [*Standards of Practice*](#). Guardians should look to the Standards for guidance on ways to carry out these ethical principles, with specific reference to the highlighted standards.



Ethical Principles

The term “guardian” includes all court-appointed fiduciaries. These Ethical Standards are reflected throughout the National Guardianship Association’s Standards of Practice. Guardians should look to the Standards for guidance on ways to carry out these ethical principles, with specific reference to the highlighted standards.

Download NGA’s Standards of Practice for free at www.guardianship.org.

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National Guardianship Association Ethical Principles

1. A guardian treats the person with dignity (Standard 3)
 2. A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)
 3. A guardian selects the option that places the least restrictions on the person's freedom and rights. (Standard 8)
 4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
 5. A guardian maximizes the self-reliance and independence of the person. (Standard 9)
 6. A guardian keeps confidential the affairs of the person. (Standard 11)
 7. A guardian avoids conflicts of interest and self-dealing. (Standard 16)
 8. A guardian complies with all laws and court orders. (Standard 2)
 9. A guardian manages all financial matters carefully. (Standard 18)
 10. A guardian respects that the money and property being managed belong to the person. (Standard 17)
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COLORADO OFFICE OF PUBLIC GUARDIANSHIP

POLICY 2.3 STANDARDS OF PRACTICE

FOR GUARDIANS

The Colorado Office of Public Guardianship adopts the National Guardianship Association Standards of Practice for Guardians. Such standards are applied throughout the Colorado Office of Public Guardianship Operating Policies and Manual.

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Standards of Practice

*Adopted 2000
Fourth Edition - 2013*

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National Guardianship Association

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Preamble

Developing standards for guardians has been an ongoing challenge for the National Guardianship Association (NGA). Not only has the profession undergone rapid change since the original seven standards were written in 1991, but the basic issues have been, and remain, imprecise and difficult to define for a national, membership-based organization. A basic philosophical element complicating the process has been the need to strike a consistent balance between standards that represent an ideal and those that recognize practical limitations, whether for a family guardian or for a professional guardian.

In July of 1991, the NGA adopted a previously published Code of Ethics to guide guardians in their decision-making process. The next task of the NGA was to formulate specific standards to be applied in the day-to-day practice of guardianship. The seven original standards of practice that were written and adopted by the NGA in 1991 have now been expanded to cover more of the duties and responsibilities that face court-appointed guardians today.

The same lengthy discussions that took place in 1991 occurred again during each updating of the standards. These discussions centered on the need to state what is "right" versus the need to recognize and accept the inevitability of the status quo-- too many clients, not enough funding or staff. While we all agree that such restrictions are all too commonplace, we also feel that little is gained by simply accepting a substandard or unacceptable state of affairs. NGA has, therefore, adopted standards that we feel reflect as realistically as possible the best or highest quality of practice. In many cases, best practice may go beyond what state law requires of a guardian.

In reading this document, it is important to recognize that some of the standards enunciate ideals or philosophical points, while others speak to day-to-day practical matters. Both approaches are critically important. It is not our ambition to prescribe a precise program description or management manual. Rather, we have sought to shape a mirror that practitioners and funders can use to evaluate their efforts. The standards also reflect the mandate that all guardians must perform in accordance with current state law governing guardianships and certification of guardians.

To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." The guidelines that appear in some standards are suggested ways of carrying out those standards.

This document embodies practices and standards from a number of professional sources. As such, it sometimes makes unavoidable use of legal and medical "terms of art" where they would commonly and most accurately be used by professionals who work in the particular area. In addition, the field of guardianship itself makes use of terms that vary widely from state to state. "Guardian" and "person under guardianship" or "person" are the terms used here to simplify the many references to these roles. Where points apply to professional, as opposed to family, guardians, they are indicated. "Guardian," as used in the standards, means guardian of the person, guardian of the estate or guardian of the person and estate, depending on the standard being addressed.

In this work we have drawn on a number of collective sources. First and foremost have been NGA members who have contributed extensive time and energy and valuable input into the development of these standards. The *Model Code of Ethics for Guardians*, developed by Michael D. Casasanto, Mitchell Simon, and

Standards of Practice, National Guardianship Association

Judith Roman and adopted by the NGA, has formed the foundation from which the standards were developed. Other very important sources that helped in the creation of our standards of practice are the U.S. Administration on Aging, the AARP, the Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, Washington, California, Illinois, Minnesota, and Michigan. We thank everyone listed above and others for their ongoing commitment to the profession of guardianship.

The *NGA Standards of Practice for Guardians* were first adopted by the NGA Board of Directors and ratified by the membership in 2000. The 2003 edition of the *Standards* incorporates language that came forth from *Wingspan 2001*, the National Conference on Guardianship Reform. The 2007 edition provides minor clarification of the language in the earlier editions without any substantive changes. These *Standards* were used as a starting point by the 2011 Third National Guardianship Summit in developing new standards. The 2012 edition incorporates the Summit Standards.

Please be advised that any entity adopting these standards should give attribution to NGA.

Check the NGA Website (www.guardianship.org) for the most current edition of the *NGA Standards of Practice*.

NGA Standards of Practice

○ **NGA Standard 1 – Applicable Law and General Standards**

- I. The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships.
- II. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians.
- III. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.
- IV. Every guardian should be held to the same standards, regardless of familial relationship, except a guardian with a higher level of relevant skills shall be held to the use of those skills.

○ **NGA Standard 2 – The Guardian’s Relationship to the Court**

- I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and all decisions and actions shall be consistent with that court order.
- II. The guardian shall obtain court authorization for actions that are subject to court approval.
- III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions.
- IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.
- V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.
- VI. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but no less often than annually. Ways that guardians of the person and of the estate keep the court informed about the well-being of the person and the status of the estate include but not limited to:
 - A. Personal care plans and financial plans,
 - B. Inventories and appraisals, and
 - C. Reports and accountings.
- VII. The guardian shall use available technology to:
 - A. File the general plan, inventory and appraisal, and annual reports and accountings,
 - B. Access responsible education and information about guardianships, and

C. Assist in the administration of the estate.

VIII. The guardian shall promptly inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian's authority.

○ **NGA Standard 3 – The Guardian's Professional Relationship with the Person**

I. The guardian shall treat the person under guardianship with dignity.

II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.

III. The guardian may not engage in sexual relations with a person unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.

V. The guardian shall seek ongoing education concerning the following:

- A. Person-centered planning,
- B. Surrogate decision-making,
- C. Responsibilities and duties of guardians,
- D. Legal processes of guardianship, and
- E. State certification of guardians.

○ **NGA Standard 4 – The Guardian's Relationship with Family Members and Friends of the Person**

I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.

- A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.
- B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

II. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence.

III. When disposing of the person's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).

IV. The guardian shall make reasonable efforts to preserve property designated in the

- person's will and other estate planning devices executed by the person.
- V. The guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.
 - VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The guardian may request and consider family input when making medical decisions.

Note: Refer to Standard 11 as it relates to confidentiality issues.

○ **NGA Standard 5 – The Guardian’s Relationship with Other Professionals and Providers of Service to the Person**

- I. The guardian shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation on behalf of the person.
- II. The guardian shall develop and maintain a working knowledge of the services, providers and facilities available in the community.
- III. The guardian shall stay current with changes in community resources to ensure that the person under guardianship receives high-quality services from the most appropriate provider.
- IV. A guardian who is not a family member guardian may not provide direct service to the person. The guardian shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.
- V. The guardian shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person.
- VI. The guardian shall make a good faith effort to cooperate with other surrogate decision-makers for the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee.
- VII. The guardian may consider mentoring new guardians.

○ **NGA Standard 6 – Informed Consent**

- I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent.
- II. Informed Consent is an individual’s agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
- III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.
- IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.

- V. In evaluating each requested decision, the guardian shall do the following:
- A. Have a clear understanding of the issue for which informed consent is being sought,
 - B. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
 - C. Determine the conditions that necessitate treatment or action,
 - D. Encourage and support the person in understanding the facts and directing a decision,
 - E. Maximize the participation of the person in making the decision,
 - F. Determine whether the person has previously stated preferences in regard to a decision of this nature,
 - G. Determine why this decision needs to be made now rather than later,
 - H. Determine what will happen if a decision is made to take no action,
 - I. Determine what the least restrictive alternative is for the situation,
 - J. Obtain a second medical or professional opinion, if necessary,
 - K. Obtain information or input from family and from other professionals, and
 - L. Obtain written documentation of all reports relevant to each decision.

○ **NGA Standard 7 – Standards for Decision-Making**

- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.
- II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.
 - A. First, the guardian shall ask the person what he or she wants.
 - B. Second, if the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
 - C. Third, only when the person, even with assistance, cannot express his or her goals and preferences, shall the guardian seek input from others familiar with the person to determine what the individual would have wanted.

- D. Finally, only when the person's goals and preferences cannot be ascertained, may the guardian make a decision in the person's best interest.

III. Substituted Judgment

- A. Substituted Judgment is the principle of decision-making that substitutes the decision the person would have made when the person had capacity as the guiding force in any surrogate decision the guardian makes.
- B. Substituted Judgment promotes the underlying values of self-determination and well-being of the person.
- C. Substituted Judgment is not used when following the person's wishes would cause substantial harm to the person or when the guardian cannot establish the person's goals and preferences even with support.

IV. Best Interest

- A. Best Interest is the principle of decision-making that should be used only when the person has never had capacity, when the person's goals and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- B. The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
- C. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

○ **NGA Standard 8 – Least Restrictive Alternative**

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety.
- III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
 - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.

- B. The guardian shall strive to know the person's goals and preferences.
- C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

○ **NGA Standard 9 – Self-Determination of the Person**

- I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the person.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.
- IV. The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.
- V. The guardian shall wherever possible, seek to ensure that the person leads the planning process; and at a minimum to ensure that the person participates in the process.

○ **NGA Standard 10 – The Guardian's Duties Regarding Diversity and Personal Preferences of the Person**

- I. The guardian shall determine the extent to which the person under guardianship identifies with particular ethnic, religious, and cultural values. To determine these values, the guardian shall also consider the following:
 - A. The person's attitudes regarding illness, pain, and suffering,
 - B. The person's attitudes regarding death and dying,
 - C. The person's views regarding quality of life issues,
 - D. The person's views regarding societal roles and relationships, and
 - E. The person's attitudes regarding funeral and burial customs.
- II. The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, that the person is not victimized, and that an environment conducive to this expression in privacy is provided.

- A. The guardian shall ensure that the person has information about and access to accommodations necessary to permit sexual expression to the extent the person desires and to the extent the person possesses the capacity to consent to the specific activity.
- B. The guardian shall take reasonable measures to protect the health and well-being of the person.
- C. The guardian shall ensure that the person is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the person the level of protection appropriate to the person's lifestyle and ability, while considering the preferences of the person. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.
- D. The guardian shall protect the rights of the person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the person's values and customs.

○ **NGA Standard 11 - Confidentiality**

- I. The guardian shall keep the affairs of the person under guardianship confidential.
- II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.
- V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk. Such a refusal to disclose information must be reported to the court.

○ **NGA Standard 12 – Duties of the Guardian of the Person**

- I. The guardian shall have the following duties and obligations to the person under guardianship unless the order of appointment provides otherwise:
 - A. To see that the person is living in the most appropriate environment that addresses the person's goals, needs, and preferences.
 - 1. The guardian shall have a strong priority for home or other community-based settings, when not inconsistent with the person's goals and preferences.
 - 2. The guardian shall authorize moving a person to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the person and serves the overall best interest of the person.

3. The guardian shall consider the proximity of the setting to those people and activities that are important to the person when choosing a residential setting.
 4. At a minimum the guardian shall report to a court before a move to a more restrictive residential setting, and the justification for the move.
 5. When the guardian considers involuntary or long-term placement of the person in an institutional setting, the bases of the decision shall be to minimize the risk of substantial harm to the person, to obtain the most appropriate placement possible, and to secure the best treatment for the person.
- B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the person.
 - C. To make reasonable efforts to secure for the person medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the person's potential for self-reliance and independence.
 - D. To keep the affairs of the person confidential, except when it is necessary to disclose such affairs for the best interests of the person.
 - E. To seek specific judicial authority when a civil commitment, the dissolution of a marriage, or another extraordinary circumstance is being addressed.
 - F. To file with the court, on a timely basis but not less often than annually, all reports required by state statute, regulations, court rule, or the particular court pursuant to whose authority the guardian was appointed.
 - G. To adhere to the requirements of Standard 17 - Duties of the Guardian of the Estate and Standard 18 - Guardian of the Estate: Initial and Ongoing Responsibilities, to the extent that the guardian of the person has been authorized by the court to manage the person's property.
 - H. To petition the court for limitation or termination of the guardianship when the person no longer meets the standard pursuant to which the guardianship was imposed, or when there is an effective alternative available.
 - I. To promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statutes.

○ **NGA Standard 13 – Guardian of the Person: Initial and Ongoing Responsibilities**

- I. With the proper authority, initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the person under guardianship that require immediate action.

- B. The guardian shall meet with the person as soon after the appointment as is feasible. At the first meeting, the guardian shall:
 - 1. Communicate to the person the role of the guardian;
 - 2. Explain the rights retained by the person;
 - 3. Assess the person's physical and social situation, the person's educational, vocational, and recreational needs, the person's preferences, and the support systems available to the person; and
 - 4. Attempt to gather any missing necessary information regarding the person.
- C. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The guardian shall:
 - 1. Obtain an evaluation of the person's condition, treatment, and functional status from the person's treating physician or appropriate specialist, if a comprehensive medical evaluation was not completed as part of the petitioning process, or has not been done within the past year.
 - 2. Obtain a psychological evaluation, if appropriate.
 - 3. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts.
 - 4. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person.
- II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs and preferences of the person.
 - A. The plan shall emphasize a "person-centered philosophy."
 - B. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs and preferences of the person.
 - C. The plan must also address whether the person's finances and budget are in line with the services the person needs and are flexible enough to deal with the changing status of the person.
 - D. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
 - E. The plan must be based on a multidisciplinary functional assessment.

- F. The plan must be updated no less often than annually.
- III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:
- A. The person's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
 - B. All legal documents involving the person;
 - C. Advance directives;
 - D. A list of key contacts;
 - E. A list of service providers, contact information, a description of services provided to the person, and progress/status reports;
 - F. A list of all over-the-counter and prescribed medication the person is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication;
 - G. Documentation of all client and collateral contacts, including the date, time, and activity;
 - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the person;
 - I. The guardianship plan;
 - J. An inventory, if required;
 - K. Assessments regarding the person's past and present medical, psychological, and social functioning;
 - L. Documentation of the person's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
 - M. A photograph of the person.
- IV. The guardian shall visit the person no less than monthly.
- A. The guardian shall assess the person's physical appearance and condition and assess the appropriateness of the person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
 - B. The guardian shall maintain substantive communication with service providers, caregivers, and others attending to the person.
 - C. The guardian shall participate in all care or planning conferences concerning the

residential, educational, vocational, or rehabilitation program of the person.

- D. The guardian shall require that each service provider develop an appropriate service plan for the person and shall take appropriate action to ensure that the service plans are being implemented.
- E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the person at the place of residence and at any program site to ascertain that the care plan is being properly followed.
- F. The guardian shall advocate on behalf of the person with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the person, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.
- G. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the individual's current goals, needs and preferences, including but not limited to:
 - 1. Evaluating the plan;
 - 2. Enforcing residents' rights, legal and civil rights; and
 - 3. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person.
- V. The guardian shall fully identify, examine, and continue to seek information regarding options that will fulfill the person's goals, needs, and preferences.
 - A. Guardians shall take full advantage of professional assistance in identifying all available options for long term services and supports.
 - B. Sources of professional assistance include but are not limited to area agencies on aging, centers for independent living, protection and advocacy agencies, long-term care ombudsmen, developmental disabilities councils, aging and disability resource centers, and community mental health agencies.
- VI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- VII. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.

○ **NGA Standard 14 – Decision-Making About Medical Treatment**

- I. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship.

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- II. The guardian shall ensure that all medical care for the person is appropriately provided and that the person is treated with dignity.
- III. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care decision-making.
- IV. The guardian, in making health care decisions or seeking court approval for a decision, shall:
 - A. Maximize the participation of the person,
 - B. Acquire a clear understanding of the medical facts,
 - C. Acquire a clear understanding of the health care options and the risks and benefits of each option, and
 - D. Encourage and support the individual in understanding the facts and directing a decision.
- V. Use the substituted judgment standard with respect to a health care decision unless the guardian cannot determine person's prior wishes.
- VI. The guardian shall determine whether the person, before the appointment of a guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts. On finding such documents, the guardian shall inform the court and other interested parties of the existing health care documents.
- VII. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian.
- VIII. If the person's preferences are unknown and unascertainable, the guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the person's welfare, to determine the person's best interests, which determination shall include consideration of consequences for others that an individual in the person's circumstances would consider.
- IX. Absent an emergency or the person's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the person's wishes with respect to a medical intervention, a guardian who has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria listed in Standards 6 and 7.
- X. In the event of an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7, within the time allotted by the emergency.
- XI. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the person. The guardian shall obtain a second opinion from an independent physician.

- XII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.
- XIII. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- XIV. The guardian may not authorize extraordinary procedures without prior authorization from the court unless the person has executed a living will or durable power of attorney that clearly indicates the person's desire with respect to that action. Extraordinary procedures may include, but are not limited to, the following medical interventions:
 - A. Psychosurgery,
 - B. Experimental treatment,
 - C. Sterilization,
 - D. Abortion, and
 - E. Electroshock therapy.
- XV. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care, unless not in accordance with the person's preferences and values.
- XVI. The guardian shall keep individuals that are important to the person reasonably informed of important health care decisions.

○ **NGA Standard 15 – Decision-Making About Withholding and Withdrawal of Medical Treatment**

- I. The NGA recognizes that there are circumstances in which, with the approval of the court if necessary, it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of the person under guardianship. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the person.
- II. If the person had expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, the guardian shall follow the wishes of the person. If the person's current wishes are in conflict with wishes previously expressed when the person had capacity, the guardian shall have this ethical dilemma reviewed by an ethics committee and if necessary, submit the issue to the court for direction.
- III. When making this decision on behalf of the person, the guardian shall gather and document information as outlined in Standard 6 and shall follow Standard 7.

○ **NGA Standard 16 – Conflict of Interest: Ancillary and Support Services**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing, and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
 - A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.
 1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.
 2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
 3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.
 - B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
 - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
 - D. The guardian may not be in a position of representing both the person and the service provider.
 - E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
 - F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.

- G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
- H. The guardian shall neither solicit nor accept incentives from service providers.
- I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.
- J. A guardian who is an attorney or employs attorneys may provide legal services to a person only when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.
- K. The guardian may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to the person under the guardianship, and shall disclose such transactions to interested parties and obtain prior court approval.

○ **NGA Standard 17 – Duties of the Guardian of the Estate**

- I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.
- II. When making decisions the guardian shall:
 - A. Give priority to the goals, needs and preferences of the person, and
 - B. Weigh the costs and benefits to the estate.
- III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.
- IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.
- V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.
- VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.
- VII. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- VIII. The guardian shall provide competent management of the person's property and, shall supervise all income and disbursements of the estate.

- IX. The guardian shall manage the estate only for the benefit of the person.
- X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.
- XII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets.
- XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.
- XIV. The guardian shall employ prudent accounting procedures when managing the estate.
- XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.
- XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statute.

○ **NGA Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities**

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
 - 1. The guardian shall ascertain the income, assets, and liabilities of the person.
 - 2. The guardian shall ascertain the goals, needs and preferences of the person.
 - 3. The guardian shall coordinate and consult with others close to the person.
 - B. The guardian shall meet with the person under guardianship as soon after the appointment as feasible. At the first meeting the guardian shall:
 - 1. Communicate to the person the role of the guardian;
 - 2. Outline the rights retained by the person and the grievance procedures available;

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3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity; and
 4. Attempt to gather from the person any necessary information regarding the estate.
- II. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.
 - III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.
 - A. Guardian shall value the well-being of the person over the preservation of the estate.
 - B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.
 - C. The financial plan shall emphasize a “person-centered philosophy”.
 - IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.
 - V. The guardian shall obtain all public and insurance benefits for which the person is eligible.
 - VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
 - VII. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.
 - VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.
 - IX. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.
 - X. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
 - XI. The guardian may monitor, provide oversight or manage the personal allowance of the person.
 - XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

○ **NGA Standard 19 – Property Management**

- I. The guardian may not dispose of real or personal property of the person under guardianship without judicial, administrative, or other independent review.
- II. In the absence of reliable evidence of the person's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the person, or an interest in that property, unless doing so is in the best interest of the person.
- III. In considering whether to dispose of the person's property, the guardian shall consider the following:
 - A. Whether disposing of the property will benefit or improve the life of the person,
 - B. The likelihood that the person will need or benefit from the property in the future,
 - C. The previously expressed or current desires of the person with regard to the property,
 - D. The provisions of the person's estate plan as it relates to the property, if any,
 - E. The tax consequences of the transaction,
 - F. The impact of the transaction on the person's entitlement to public benefits,
 - G. The condition of the entire estate,
 - H. The ability of the person to maintain the property,
 - I. The availability and appropriateness of alternatives to the disposition of the property,
 - J. The likelihood that property may deteriorate or be subject to waste, and
 - K. The benefits versus the liability and costs of maintaining the property,
- IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.
- V. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

○ **NGA Standard 20 – Conflict of Interest: Estate, Financial, and Business Services**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

- II. Rules relating to specific situations that might create an impropriety or conflict of interest include the following:
- A. The guardian may not commingle personal or program funds with the funds of the person, except as follows:
 - 1. This standard does not prohibit the guardian from consolidating and maintaining a person's funds in joint accounts with the funds of other persons.
 - 2. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.
 - 3. When an individual or organization serves several persons, it may be more efficient and more cost-effective to pool the individual estate funds in a single account. In this manner, banking fees and costs are distributed, rather than being borne by each estate separately.
 - 4. If the court allows the use of combined accounts, they should be permitted only where the guardian has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.
 - B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
 - C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above.
 - D. The guardian may not loan or give money or objects of worth from the person's estate unless specific prior approval is obtained.
 - E. The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained and a reasonable showing is made that such support is consistent with the person's goals, needs and preferences and will not substantially harm the estate.
 - F. The guardian may not borrow funds from, or lend funds to, the person unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the person's benefits, and the transaction is approved by the court.
 - G. The guardian may not profit from any transactions made on behalf of the person's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

○ **NGA Standard 21 – Termination and Limitation of Guardianship**

- I. Limited guardianship of the person and estate is preferred over a plenary guardianship.
- II. The guardian shall assist the person under guardianship to develop or regain the capacity to manage his or her personal and financial affairs.
- III. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
 - A. When the person has developed or regained capacity in areas in which he or she was found incapacitated by the court,
 - B. When less restrictive alternatives exist,
 - C. When the person expresses the desire to challenge the necessity of all or part of the guardianship,
 - D. When the person has died, or
 - E. When the guardianship no longer benefits the person.

○ **NGA Standard 22 – Guardianship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. The guardian shall:
 - A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action,
 - B. Disclose a projection of annual fiduciary fees within 90 days of appointment,
 - C. Disclose fee changes,
 - D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment, and
 - E. Disclose a detailed explanation for any claim for fiduciary fees.
- V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.

- VI. A guardian may seek payment of fiduciary fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance and health care insurance premiums.
- VII. Factors to be considered in determining reasonableness of the guardian's fees include:
- A. Powers and responsibilities under the court appointment;
 - B. Necessity of the services;
 - C. The request for compensation in comparison to a previously disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity;
 - D. The guardian's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment;
 - E. The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken;
 - F. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;
 - G. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered the service better, cheaper, faster;
 - H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs;
 - I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate;
 - J. The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter;
 - K. The degree of financial or professional risk and responsibility assumed;
 - L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement; and
 - M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest.

- VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:
- A. Date and time spent on a task,
 - B. Duty performed,
 - C. Expenses incurred,
 - D. Collateral contacts involved, and
 - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).
- IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

○ **NGA Standard 23 – Management of Multiple Guardianship Cases**

- I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.
- II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.
 - A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.
 - B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

○ **NGA Standard 24 – Quality Assurance**

- I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.
- II. The independent review shall occur periodically, but no less often than every two years, and must include a review of a representative sample of cases.
- III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the person and with the individual providing direct service to the person.
- IV. An independent review may be obtained from:

A court monitoring system,

- A. An independent peer, or
 - B. An CGC national master guardian.
- V. The quality assurance review does not replace other monitoring requirements established by the court.

○ **NGA Standard 25 – Sale or Purchase of a Guardianship Practice**

- I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.
- II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.
- III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:
 - A. A professional guardian considering the sale of a guardianship practice shall ensure that the persons are considered in the sale process and that guardianship responsibilities continue to be met during the transition.
 - B. The professional guardian shall require documentation of the purchaser's references pertaining to qualifications to serve as guardian, as defined by state statutes.
 - C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons is not appropriate.
 - D. The sale price for the guardianship practice must not be the sole consideration in selecting the purchaser.
 - E. The professional guardian shall provide formal written notice of the proposed sale to the court, to the persons, and to other interested parties, even if not required by state statutes.
 - F. Consideration should be given to requesting that the court appoint a guardian ad litem, or another third party reviewer, to protect the interests of the persons.
 - G. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons during the period of the sale and transfer of ownership.
 - H. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.
 - I. The fees charged to existing persons may not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.

- IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice may not be considered a sale or purchase under this standard.

Definitions

ADVANCE DIRECTIVE - A written instruction, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his or her desires.

ADVOCATE - To assist, defend, or plead in favor of another.

ARM'S-LENGTH RELATIONSHIP - A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both.

BEST INTEREST - The course of action that maximizes what is best for a person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the person.

CAPACITY - Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one's acts. (Black's)

CONFLICT OF INTEREST - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

COURT - An arm of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. (Black's)

COURT ORDER - A legal document issued by the court and signed by a judge. Examples include a letter of guardianship spelling out directions for the care of the person and the estate and an authorization or denial of a request for action.

COURT-REQUIRED REPORT - A report that the guardian is required by statute or court order to submit to the court relative to the guardianship.

DESIGNATION OF GUARDIAN - A formal means of nominating a guardian before a guardian is needed.

DIRECT SERVICES - These include medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

ESTATE - Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

EXTRAORDINARY MEDICAL CIRCUMSTANCE - Includes abortion, removal of life support, sterilization, experimental treatment, and other controversial medical issues.

FIDUCIARY - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

FREESTANDING ENTITY - An agency or organization that is independent from all other agencies or organizations

FUNCTIONAL ASSESSMENT - A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

GUARDIAN – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

Conservator is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.

Emergency/Temporary Guardian is a guardian whose authority is temporary and who is usually appointed only in an emergency.

Foreign Guardian is a guardian appointed in another state or jurisdiction.

Guardian of the Estate is a guardian who possesses any or all powers and rights with regard to the property of the individual.

Guardian of the Person is a guardian who possesses any or all of the powers and rights granted by the court with regard to the personal affairs of the individual.

Limited Guardian is a guardian appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.

Plenary Guardian is a person appointed by the court to exercise all delegable rights and powers of the person after the court finds the person lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

Pre-Need Guardian is a guardian who is formally nominated before a guardian is needed.

Standby Guardian is a person, agency, or organization whose appointment as guardian becomes effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.

Successor Guardian is a guardian who is appointed to act upon the death or resignation of a previous guardian.

INFORMED CONSENT - A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

LEAST RESTRICTIVE ALTERNATIVE - A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

PERSON UNDER GUARDIANSHIP OR SIMPLY "PERSON" - A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Conservatee, Disabled Person, Protected Person, Incapacitated Person and Ward.

PERSON-CENTERED PLANNING¹ - A family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand and clearly describe the unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- Is supported in a web of relationships, both natural and paid, within their communities.

PRUDENT INVESTOR RULE - All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and the guardian who does not use risk-reducing strategies may be penalized. Under most circumstances, the person's assets must be diversified. The guardian is obligated to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk. The possible effects of inflation must be considered as part of the investment strategy. The guardian shall either demonstrate investment skill in managing assets or shall delegate investment management to another qualified party.

SELF-DETERMINATION - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

SOCIAL SERVICES - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

SUBSTITUTED JUDGMENT - The principle of decision-making that requires implementation of the course of action that comports with the individual person's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

¹ Personal communication with Michael Smull, Mary Lou Bourne & Leigh Ann Kingsbury, Support Development Associates, LLC (May 2, 2012). See Michael Smull, The Learning Community for Person Centered Practices, www.learningcommunity.us (April 2012). See also John O'Brien & Connie Lyle O'Brien, eds., *A Little Book About Person Centered Planning*, Inclusion Press (2000).

NGA and CGC Qualifications for Court-Appointed Guardians

Corporate Guardian - A corporate guardian is a corporation that is named as guardian for an individual and may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities, and nonprofit entities.

Guidelines:

A corporate guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national certified guardians and national master guardians.

Family Guardian - A family guardian is an individual who is appointed as guardian for a person to whom he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective person, the court prefers to appoint the family member as guardian. On court approval, a family guardian may receive reasonable compensation for time and expenses relating to care of the person.

Guidelines:

A family guardian:

1. Is encouraged to recognize the resources available through the NGA.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice* when carrying out guardianship responsibilities.

Individual Professional Guardian - An individual professional guardian is an individual who is not related to the person by blood or marriage and with court approval may receive compensation in his or her role as guardian. He or she usually acts as guardian for two or more individuals.

Guidelines:

An individual professional guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to become a national certified guardian and national master guardian, if applicable.

National Master Guardian - A national master guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national master guardian:

1. Shall meet the Master guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice*.

Public Guardian - A public guardian is a governmental entity that is named as guardian of an individual and may receive compensation in its role as guardian with court approval. Public guardians may include branches of state, county, or local government.

Guidelines:

A public guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national registered guardians and national master guardians.

National Certified Guardian - A national certified guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national certified guardian:

1. Shall meet the National certified guardian qualifications as established by the Center for Guardianship Certification.
2. Shall follow the *NGA Ethical Principals*.
3. Shall follow the *NGA Standards of Practice*.
4. Should strive to become a national master guardian.

Volunteer Guardian - A volunteer guardian is a person who is not related to the person by blood or marriage and who does not receive any compensation in his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval.

Guidelines:

A volunteer guardian:

1. Shall follow the *NGA Ethical Principals*.
2. Shall follow the *NGA Standards of Practice*.
3. Is encouraged to become a national certified guardian and national master guardian, if applicable.