

COLORADO OFFICE OF PUBLIC GUARDIANSHIP  
POLICY 6: PROGRAM SERVICES STANDARDS

## Policy 6. Program Services Standards

The Colorado Office of Public Guardianship's (OPG) design and operation shall follow the tenets of the National Guardianship Association (NGA) Ethical Principles and the NGA Standards of Practice to assure that these principles guide program design and day to day services. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice.

### Policy 6.1. Applicable Law and General Standards

- a. **The Office of Public Guardianship Act**, C.R.S. §§ 13-94-101 – 13-94-111 (2017, 2019).  
<https://advance.lexis.com/api/permalink/5e186416-ff24-4eab-afa0-ac6ec0dd0943/?context=1000516>

Highlights:

- Provide guardianship services to indigent and incapacitated adults who reside in the 2<sup>nd</sup> Judicial District/Denver County:
  - (A) Have no responsible family members or friends who are available and appropriate to serve as guardian;
  - (B) Lack adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding;
  - (C) Are not subject to a petition for appointment of guardian filed by a county adult protective services unit or otherwise authorized by section § 26-3.1-104, C.R.S.
- Gather data to help the general assembly determine the need for, and the feasibility of, a statewide office of public guardianship;
- The office is a pilot program, to be evaluated and then continued, discontinued, or expanded at the discretion of the general assembly in 2021 [2023];
- Director Report due before or on January 1, 2023;

- Treat liberty and autonomy as paramount values for all state residents;
- Permit incapacitated adults to participate as fully as possible in all decisions that affect them; and
- Assist incapacitated adults to regain or develop their capacities to the maximum extent as possible.

**b. Colorado Probate Statutes**

1. Colorado Probate Code – General Provisions, Definitions, Jurisdiction, §§ 15-10-101, et. seq.
  - i. Probate Glossary. If a conflict exists between a term defined under the Colorado Probate Code and the National Guardianship Association, the Colorado Probate Code definition supercedes.
2. Colorado Probate Code – Persons Under Disability – Protections
  - i. General Provisions, C.R.S. §§ 15-14-101 – 15-14-122;
  - ii. Guardianship of Incapacitated Adults, C.R.S. §§ 15-14-301 – 15-14-319;
3. Colorado Probate Code – Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, C.R.S. §§ 15-14.5-101, et seq.

**c. Colorado Rules of Probate Procedure, Supreme Court Rules Chapter 27 (2017).**

**d. National Guardianship Association (NGA) Standards of Practice for Agencies and Programs Providing Guardianship Services.** See Policy 2.1.

**e. NGA Ethical Principles.** See Policy 2.2.

**f. NGA Standards of Practice.** See Policy 2.3.

## Policy 6.2. Eligibility and Prioritization

Eligibility criteria is established pursuant to § 13-94-102 (2)(l), C.R.S. (2017): Provide guardianship services to indigent and incapacitated adults who reside in the 2<sup>nd</sup> Judicial District/Denver County:

(A) Have no responsible family members or friends who are available and appropriate to serve as guardian;

(B) Lack adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding;

(C) Are not subject to a petition for appointment of guardian filed by a county adult protective services unit or otherwise authorized by section § 26-3.1-104, C.R.S.

Prioritization will be considered when accepting new cases as the number of cases in which services have been requested exceeds the number of cases in which public guardianship services can be provided. The Colorado Office of Public Guardianship (OPG) case acceptance priorities for an adult residing within the 2<sup>nd</sup> Judicial District and:

1. Individuals in need for immediate medical decision making, including individuals needing safe discharge/placement and must have been a Denver County/2<sup>nd</sup> Judicial District resident prior to institutionalization or hospitalization; or
2. At significant risk of harm from abuse, exploitation, abandonment, neglect or self-neglect; or
3. In imminent danger of losing or suffering a significant reduction in public services that are necessary to live successfully in the most integrated and least restrictive environment that is appropriate for a specific individual; or
4. Experiencing significant mental health issues creating a significant risk of harm from abuse, exploitation, abandonment, neglect or self-neglect; or
5. Homeless.

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I, II, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice.

For the Colorado OPG purposes, a **homeless individual**, is defined as an individual who lacks a fixed, regular, and adequate nighttime residence, further meaning (*See 42 U.S. Code § 11302. General definition of homeless individual*):

- a. Has a primary nighttime residence that is a public or private place not meant for human habitation;

- b. Is living in a publicly or privately-operated shelter designated to provide temporary living arrangements; or
- c. Is exiting an institution where she has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution and must have been a Denver County/2<sup>nd</sup> Judicial District resident prior to institutionalization or hospitalization.

### **Policy 6.3. Referral and Intake Process**

Referrals and requests for a Public Guardian will be completed via an on-line process stated on the Colorado Office of Public Guardianship (OPG) website. It will be a secure and confidential process. For individuals that do not have access or the ability to complete a referral on-line, the Colorado OPG staff will assist those individuals by phone. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I, II, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice.

A referring party may be an attorney, a social worker, or other party wishing to request a Public Guardian for a client or individual. As the Colorado OPG cannot file petitions as per statute, a referring party must have the legal resource to file a petition for guardianship.

- a. A referral will contain the following information. Information requested is necessary to ensure the Colorado OPG serves statutorily-mandated eligible individuals. Pursuant to C.R.S. 13-94-102 The Colorado OPG is to serve individuals that are:
  1. Adults (21 years of age or older);
  2. Indigent;
  3. Incapacitated; and
  4. Have no responsible family or friends appropriate or able to serve as guardian

Additional information requested is to assist the Colorado OPG Director with completing the Director Report and complying C.R.S. 13-94-105, C.R.S. 13-94-107.

Said information will be automatically populated into the Colorado OPG Case Management System from the online referral process:

- A. Demographic information of AIP
  - Name of Alleged Incapacitated Person (AIP)
  - Social Security Number of AIP or citizenship status of AIP
  - Address or homelessness of AIP
  - AIP county of residency (Denver only at this time)
  - Date of birth of AIP (must be 21 or older)
  - Race/Ethnicity

- Gender
- Veterans Status
- Confirmation of AIP 21 years of age or older
- Confirmation of no responsible family members or friends who are available and appropriate to serve as guardian of AIP
- Confirmation that AIP does not have funds to pay for guardianship services
- Confirmation of AIP not involved in any pending guardianship proceedings by adult protective services

B. Income and asset information of AIP

- All income sources of AIP – employment, SSA benefits, etc.
  - Ownership of real property and address and associated liabilities
  - Ownership of a vehicle and associated liabilities
  - Credit Cards and associated liabilities
  - Trust and associated documentation
  - ABLE account and associated documentation
- The basis of indigency follows C.R.S. § 13-16-103 and the Supreme Court of Colorado Chief Justice Directive (CJD) 98-01. The requested information follows Form JDF 205. The Income Eligibility Guideline are as established by the U.S. Department of Health and Human Services (See Federal Register 84 CFR 1167, 02/01/2019) and will be updated accordingly.
  - If the AIP’s income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500.00 or less, as determined by the provided referral information, the AIP is indigent and eligible for public guardianship services.
  - If the AIP’s income is up to 25% above the income eligibility guidelines and he or she has liquid assets of \$1,500.00 or less, and the monthly expenses equal or exceed the monthly income, as determined by the OPG Indigency Evaluation Form, the AIP is indigent and eligible for public guardianship services.
    - **Income** is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include wages, salary, commissions, profits, interest/investment earnings, social security benefits (including disability), Supplemental Security Income (SSI), maintenance (alimony), pension, workers’ compensation, and unemployment benefits. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the AIP’s income in a fashion

which would allow the applicant proprietary rights to the roommate's income. Gross income does not include TANF payments, food stamps, subsidized housing assistance, veteran's benefits or child support.

- **Liquid assets** include cash on hand and in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the AIP's ability to maintain home or employment.
- **Expenses** for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc. shall not be included.

C. Incapacity information of AIP

- Primary Diagnosis
- Secondary Diagnosis
- Additional Diagnoses
- History of substance abuse
- Current corroborating evaluation and medical evidence regarding diagnosis and incapacity including specific description of how the diagnosis limit the AIP that deems them as incapacitated

D. Benefits information of AIP

- Name and contact information of caseworker
- Active or denied Food stamps
- Active or denied AABD
- Active or denied Medicaid
- Active or denied Medicare
- Social Security Administration (SSA) benefits and SSA Representative Payee contact information
- Veteran's Administration (VA) benefits and VA Fiduciary contact information

E. Family member or friend availability and appropriateness information

- Name and contact information of all known family members
- Specific steps taken to contact each family member and to assess appropriateness
- Name and contact information of known interested friends
- Steps taken to contact each interested friend and to assess appropriateness

F. Attachments

- Proposed Petition, if available
- Evaluations, capacity and medical documentation
- Financial documentation

G. AIP pending criminal or other civil proceedings

- Include case identification information and upcoming hearing, if applicable
- Criminal
- Divorce, child custody, child support
- Immigration

**b. Incomplete Referrals**

A referral will not be considered complete until all information is provided. The OPG will notify the referring party that the information was received and if it is considered complete or incomplete. The Colorado OPG may contact the referring party for clarifying information or if any information in the referral was marked as “unknown.”

An incomplete referral will be placed on an internal OPG register. The referring party has 30 days to complete the referral. At 30 days, the referral will automatically be closed and the Colorado OPG will not notify the referring party. A new referral will need to be completed if the party wishes to nominate the OPG.

**c. Review of Referrals**

If the Colorado OPG does not have caseload capacity, a complete referral will be reviewed and documented in the Colorado OPG Case Management System. The Case Management System will send the referring party a notification that the Colorado OPG does not have caseload capacity.

If the Colorado OPG has caseload capacity, a complete referral will initially be reviewed for acceptance by the Colorado OPG Director and Staff Assistant. The Staff Assistant may contact the referring party for clarifying information or if any information in the referral was marked as “unknown.” The Colorado OPG Director and Staff Assistant will then review the complete referral with the potentially assigned Public Guardian. The Staff Assistant will document the case acceptance or declination in the Case Management System. The Case Management System will send the referring party a notification of acceptance or declination.

#### **d. Back up Review of Referrals**

If the Colorado OPG Director is unavailable due to a significant reason such as vacation or medical leave, the Staff Assistant and all Public Guardians will follow the review of referrals as a team.

#### **e. Case Acceptance**

The OPG will respond in writing to the referring party within 5 business days as to whether the referral will be accepted or not.

Once notified of the filing of the petition for guardianship, the OPG will e-file Acceptances of Appointment and Appointment of Designee.

The OPG will provide a letter of declination to the referring party when the OPG does not accept a case.

In cases where the OPG would accept a referral, but for lacking caseload capacity, the referral will be placed on an internal OPG register. Once caseload capacity is available, the OPG will reach out to the referring party.

#### **f. Streamlined Referrals**

A streamlined referral process is necessary to gather data regarding Colorado's unmet need for guardianship services. A streamlined referral process will be available to allow referring parties to submit referrals for clients residing outside of Denver County/2<sup>nd</sup> Judicial District and when the Colorado OPG does not have caseload capacity to accept new cases. The streamlined process is available on-line and by phone.

### **Policy 6.4 Emergency Referrals and Emergency Guardian**

The Colorado Office of Public Guardianship (OPG) will consider emergency referrals on a case-by-case basis and in consideration of Policy 6.6 Case Assignment and Weighting Procedure. The Colorado OPG serving as Emergency Guardian is generally disfavored and the use of Colorado OPG staff for this purpose should be reserved for extraordinary circumstances and when resources allow.

Policy 6.3 Referral and Intake Process will be used for emergency referrals. An emergency referral must meet the eligibility guidelines of Policy 6.2 Eligibility and Prioritization. Policy 6.6 Case Assignment and Weighting Procedure will apply to determining the availability of caseload capacity for acceptance of an emergency referral and for the Colorado OPG to serve as Emergency Guardian.



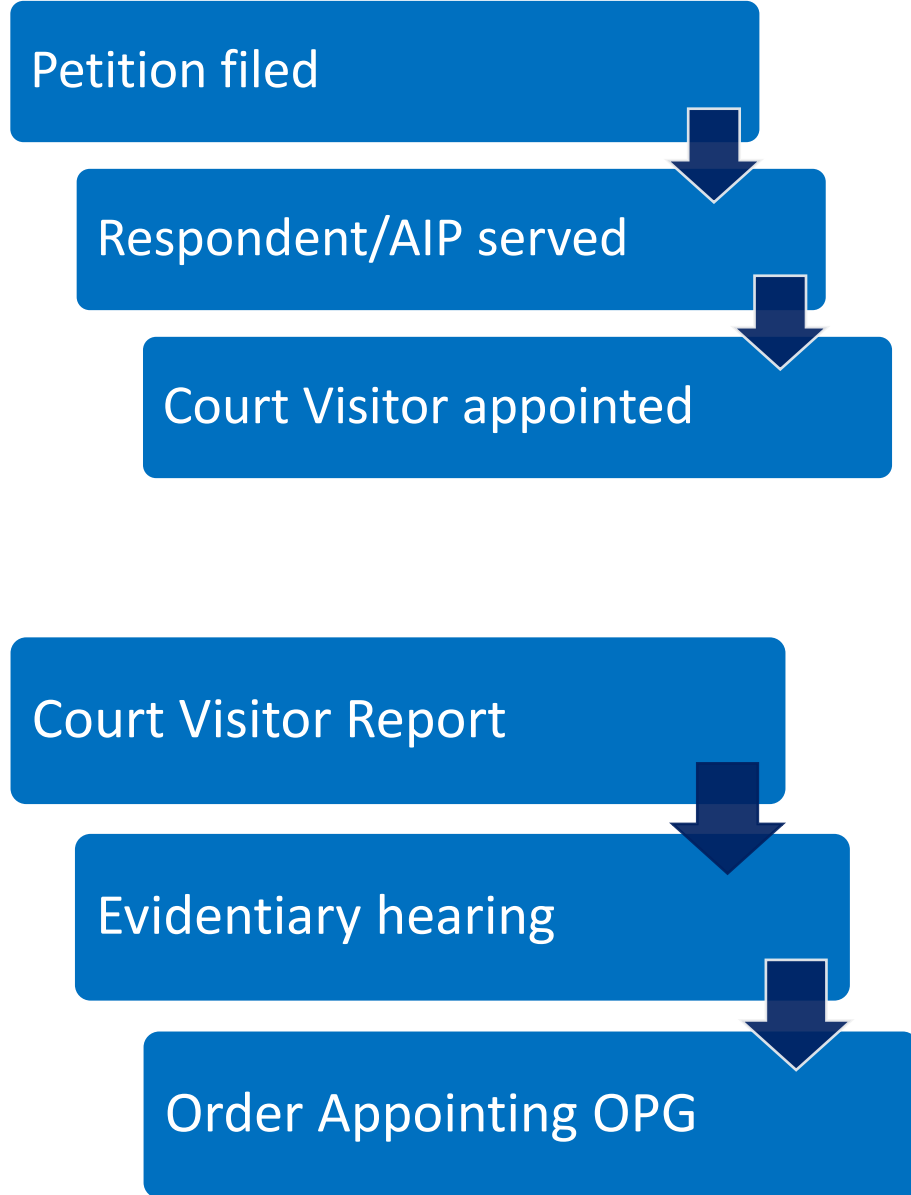
### **Prioritization for Emergency Referrals**

The Colorado OPG will consider emergency referrals on a case-by-case basis.

- a. **Previously Accepted Referral.** The priority for accepting an emergency referral is that the Colorado OPG previously accepted the referral for nomination for a permanent guardianship, and
  1. The emergency referral meets the requirements defined in C.R.S. 15-14-312: if the court finds that compliance with the procedures of this part 3 will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order.
  2. The emergency referral requires the immediate need for a medical decision-maker, and
  3. The emergency referral specifies the immediate need and that it involves a necessary medical procedure and/or medical decision, and
  4. The emergency referral specifies the steps taken to identify others to serve as emergency medical proxy or medical decision-maker.
- b. **Other Emergency Referrals.** The Colorado OPG will consider emergency referrals that have not been previously accepted for nomination for a permanent guardianship. These emergency referrals must meet a. 1-4. above for consideration.

The Colorado OPG will take appropriate actions and follow policies for ongoing case management (Policy 6.7. Ongoing Case Monitoring and Management) related to the identified emergency medical issue or as the Letters of Emergency Guardian allow.

## POLICY 6.5. INITIAL COURT PROCESS AND FORMS



### a. Withdrawal of Acceptance

If at any time prior to the court entering an Order Appointing the OPG as Guardian, should the OPG become aware that the AIP no longer meets eligibility criteria, the OPG will file a Withdrawal of Acceptance with the court.

## **b. Court Process After Acceptance**

The Staff Assistant will request a copy of the Court Visitor Report and all pleadings and documents will be secured and stored as per OPG Policy.

The designated Public Guardian will attend the evidentiary hearing. The Staff Assistant will request a certified copy of the Order of Appointment and the Letters of Guardianship, once available. Documents will be secured and stored as per OPG Policy.

## **c. Court Process After Appointment**

- i. The designated Public Guardian will begin the process outlined in Policy 6.6. Individualized Guardianship Plans.
  - ii. The Staff Assistant will prepare an Acknowledgement of Responsibilities and file it with the court.
  - iii. If at any time there is a change in the designated Public Guardian, the Staff Assistant will prepare a Report of Change of Guardian Designee form and file it with the court.
  - iv. Objection: If the Colorado OPG needs to object to another legal party's motion, petition, etc., the Director will prepare the Objection. The Staff Assistant will file the Objection with the court.
  - v. General Motion: If the Colorado OPG needs to file a motion or request court intervention, the Director will prepare the Motion. The Staff Assistant will file the Motion with the court.
  - vi. Petition for Modification of Guardianship: If the Colorado OPG needs to modify the guardianship, the Director will prepare the Petition. The Staff Assistant will file the Petition with the court.
  - vii. Petition for Termination of Guardianship: If the Colorado OPG needs to terminate the guardianship, the Director will prepare the Petition. The Staff Assistant will file the Petition with the court.
- **The Public Guardian shall notify the Court immediately upon the death of a ward and/or a change in residency. A ward may not be moved from Colorado without prior court approval.**

**d. List of Court Forms applicable to guardianships and Colorado OPG processes**

- Rights of Respondent
  - Notice of Hearing
  - Court Visitor Report
  - Acknowledgement of Responsibilities
  - Notice of Appointment
  - Acceptance of Office
  - Order Appointing Guardian
  - Letters of Guardianship
  - Initial Guardian's Report
  - Annual Guardian's Report
  - Change of Address
  - Notice of Death
  - General Motion
  - Objection
  - Petition for Modification of Guardianship
  - Petition for Termination of Guardianship
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- If a reasonable accommodation is needed to access the courts, please contact the local ADA Coordinator. Contact information can be obtained from the following website:  
[http://www.courts.state.co.us/Administration/HR/ADA/Coordinator\\_List.cfm](http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm)
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- The 2<sup>nd</sup> Judicial District – Probate Court Coordinator is Melissa Barnes at [melissa.barnes@judicial.state.co.us](mailto:melissa.barnes@judicial.state.co.us)

**Policy 6.6. Case Assignment and Weighting Procedure**

- a. 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 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. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I - III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 5, 10, 12 – 13, 23, and 24.

- b. Multiple, complex medical conditions may require more time from the individual Public Guardian 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. A pool of volunteers may be used to provide support services for stable, uncomplicated cases. However, the case assignment system is designed, it is critically important that the Colorado OPG 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.
- c. Documents and information to assist in determining case assignment, case weighting, and caseload capacity:
  - 1. Referral information;
  - 2. Court Visitor Report and/or Guardian ad Litem Report;
  - 3. Collateral information and documentation; and
  - 4. The ongoing assessment documentation, including the Individualized Guardianship Plan (IGP), within the Case Management System (CMS).
- d. Court Visitor Report. The Court Visitor Report will be analyzed in the weighting process. The more documentation regarding issues of concern will likely result in a heavier “weight” to the case. As such, the Colorado OPG will consider this weight to determine whether the Public Guardian has capacity to accept the case at that time. This will be in relation to the other cases currently on the Public Guardian’s caseload.
- e. Ongoing Assessment. Similar to the initial Court Visitor Report, the Public Guardian will continue to monitor imminent risk and safety concerns within the CMS on cases to which he or she is already assigned. Information will be recorded and tracked within the CMS track progress made on such cases and to be aware of when such concerns are either heightened or lessened. If the Public Guardian has a caseload with several heightened cases, these cases will be given greater “weight” which may impact the current capacity for the Public Guardian to accept more cases at that time. If there is a mix of cases, the “weight” of the incoming case will be considered to determine if there is current capacity. If there are mostly cases where there are little to no imminent safety concerns, it is likely the pending cases will be accepted.
- f. The weighting of cases will be flexible and structured to allow for fairness of caseloads and for data-gathering purposes. A head count of case files is not usually a good indication of the actual work involved (adapted from Social Care Institute for Excellence, *Managing Practice*, <https://www.scie.org.uk/publications/guides/guide01/managing-work/caseload.asp>).

- g. Three categories of Public Guardian work input will be considered:
  - a. **Complexity:** this includes the number of other professionals involved with the Public Guardian and client. It recognizes the Public Guardian's role in identifying and collaborating with professional networks, stakeholders and helping a client to make decisions about the client's care, goals, and maintenance.
  - b. **Risk:** this considers the professional judgment required of the Public Guardian: decisions are to be made based on risk and safety assessment (IGP); the client's situation may be a fast changing one; the work may be at a stage where professional anxiety is heightened because of lack of information or experience.
  - c. **Travel:** this considers the whether the Public Guardian has to travel appreciable distances to undertake the work with a particular client.
- h. Caseload definitions and weighting:
  - a. **Complexity**
    - i. **Tier 1 – Low Complexity:** Contact with other agencies and stakeholders is minimal, unproblematic or standard.
    - ii. **Tier 2 – Medium Complexity:** Contact with other agencies and stakeholders is changeable, requires initiation and/or ongoing maintenance.
    - iii. **Tier 3 – High Complexity:** Multiple or complex contact with other agencies and stakeholders requiring careful negotiation, advocacy, plan development or other high input.
  - b. **Risk:**
    - i. **Tier 1 – Low Risk:** No current risk involved, risk and safety assessment (IGP) is known and understood by all parties, including contingency plans negotiated.
    - ii. **Tier 2 – Medium Risk:** Risk and safety assessment (IGP) in process with options for action and decisions ready to be put into place.
    - iii. **Tier 3 – High Risk:** Current risk and safety are not assessed or a change in circumstances requires a new risk and safety assessment (IGP).
  - c. **Travel:**

- i. **Tier 1 – Low Travel:** No travel outside of Denver County/2<sup>nd</sup> Judicial District on a monthly basis.
    - ii. **Tier 2 – Medium Travel:** Travel outside of Denver County/2<sup>nd</sup> Judicial District on more than a monthly basis. Unexpected travel outside of Denver County/ 2<sup>nd</sup> Judicial District more than 3 times a year.
    - iii. **Tier 3 – High Travel:** Travel outside of Denver County/2<sup>nd</sup> Judicial District on more than a monthly basis. Unexpected travel outside of Denver County/ 2<sup>nd</sup> Judicial District more than 6 times a year.
    - iv. Tiers will change if the Colorado Office of Public Guardianship is expanded outside of the Denver County/2<sup>nd</sup> Judicial District.
  - d. Caseload weighting
    - i. Low Weight: Combined Tier scores of 3
    - ii. Medium Weight: Combined Tier scores between 4-6
    - iii. High Weight: Combined Tier scores between 7-10
- i. The weighting of cases is designed to be flexible. The Colorado OPG acknowledges that cases will likely change over time and this will impact the “weight” of the case. As such, the ongoing assessment capability, will assist in determining capacity from time-to-time as new cases are presented for potential acceptance. Further, the Colorado OPG acknowledges that all cases and persons served must be considered individually in order to truly determine the capacity of the Public Guardian at any given time.

### **Policy 6.7. Individualized Guardianship Plan Procedure**

- a. The Colorado Office of Public Guardianship (OPG) shall treat liberty and autonomy as paramount values for all state residents and permit incapacitated adults to participate as fully as possible in all decisions that affect them. The Colorado OPG shall assist incapacitated adults to regain or develop their capacities to the maximum extent possible. § 13-92-102 (3) C.R.S. (2017). National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I - III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice.
- b. An Individualized Guardianship Plan Goals also provides necessary continuity for the individual under guardianship when there is turnover, or the individual’s Public Guardian is unavailable due to illness or other extended absences.

- c. Within 60 days, the Public Guardian will complete and file the Initial Guardian's Report with the Denver Probate Court. In addition, the Public Guardian will create and begin implementing an Individualized Guardianship Plan (IGP).
- d. The Individualized Guardianship Plan (IGP) will be developed as follows:
  1. The Public Guardian must review the Court Visitor Report and all collateral information and documentation to gather information about the ward. The Public Guardian will need to ensure the areas of decision making for which he or she is responsible are specifically identified. These areas, along with the wards, strengths, abilities, and preferences will be the focus of the guardianship plan.
  2. After reviewing the Court Visitor information and being aware of the areas of decision making specifically assigned to the guardian from the court, the Public Guardian should make an appointment to visit the ward in person. The initial visit will generally occur within 10 days, and no later than 30 days after the appointment. At the initial visit, the Public Guardian should follow the ***Social History Survey, Initial Guardianship Investigation and Checklist, and 5 Wishes***. Because the Public Guardian is responsible for decision making in assigned areas per the guardianship, he or she must be careful not to overstep into areas in which the ward is able to make decisions unless the ward asks the Public Guardian to participate in some way. The Social History Survey, Initial Guardianship Investigation Checklist can be accessed in the Case Management System. The Public Guardian will engage with the client to assess maximum input and collaboration of the client and to assess the needs, goals, services of the client.
  3. If the Public Guardian has concerns about the wards current ability to make certain decisions, the Public Guardian should note this within the assessment, and determine if further evaluation is needed by speaking with care providers, family members, friends, etc.
  4. For each area of the Initial Guardianship Investigation and Checklist, the Public Guardian should document how the ward needs assistance. The Public Guardian must keep in mind the ward's culture, values, and beliefs in this process. Further, when assisting the ward in making decisions, the Public Guardian must plan to support the ward in making his or her own decisions or, if this is not presently possible, to determine how the ward would have made such decisions or what his or her culture, values, and beliefs would have impacted the ward in making such decisions. It is here where the Public Guardian must develop the best approach for interacting with the ward and meeting his or her needs in the Individualized Guardianship Plan.



5. Initial Guardianship Investigation and Checklist, the Public Guardian must determine:
  - i. What services and/or benefits are being provided to the ward
  - ii. What services and/or benefits may be needed
  - iii. Whether any assessments/evaluations need to be completed to gain a better understanding of what the ward needs
  - iv. What the goals of the ward are: to have a job, to have more social opportunities, etc.
  - v. Whether there is missing information that will help the Public Guardian to better understand the ward, such as the ward's culture, values, and beliefs. If this is not clearly indicated anywhere, the Public Guardian should go searching for this information by talking with service providers, family, friends, and others who may know.
  - vi. The Public Guardian may wish to consult and utilize various person-centered planning tools to assist in determining how to best approach decisions and goals for the ward. Tools, such as those that assist with determining what is "important to" versus "important for" the ward, may also be helpful to ensure needed services are obtained, but that they also respond to the ward's intrinsic motivations. Any person-centered planning tools utilized, must be scanned and saved within the CMS.
  
6. For both the Initial Guardianship Investigation and Checklist and the person-centered planning process, it may be necessary for the Public Guardian to consult with family, friends, physicians, and/or service providers to assist in the information gathering process. As a starting point, the Public Guardian may wish to consult with those with whom the court visitor consulted. Other people in the ward's life may emerge later to be of value as the guardianship and ongoing planning is developed. Any plans from any other organizations or providers are not meant to supplant the guardianship plan. Instead, they should be incorporated so the Public Guardian may identify areas of need and who should provide for those needs. It is not the Public Guardian's responsibility to provide direct services, but to find those with expertise and willingness to serve the ward. When completing the Initial Guardianship Investigation and Checklist and Individualized Guardianship Plans, the Public Guardian will also include comments provided directly from the client.
  
- e. Following the Initial Guardianship Investigation and Checklist and person-centered planning process, the Public Guardian must save the Individual Guardianship Plan (IGP) within the Case Management System and provide information relating to the areas of decision making with which the ward needs assistance. The IGP will glean information from the information included within the CMS and will incorporate

information directly from conversations with the ward, any family, friends, and/or service providers. The intervention plan will need to be developed and updated on a monthly basis. This should be done as a part of the monthly Public Guardian visit with the ward, as the ward will need to continue to be an ongoing participant in the creation, modification, and implementation of the plan.

- f. See Handouts:
- *Lawton-Brody IADL Scale*
  - *Katz Index of ADLs*
  - *Discharge Levels*
  - *Means to Enhance Capacity*
  - *Clinical Professionals*
  - *Cognition and Cognitive Testing*
- g. Tracking and updating the plan monthly will alert the Public Guardian as to whether there need to be any changes to the actual guardianship. For example, if the ward's needs increase and the guardianship needs to reflect that the ward needs assistance with another area of decision making, the Public Guardian will need to notify the court that a modification should be made. The same is true if the person needs less assistance with decisions, if the guardianship should be terminated entirely, or if a successor guardian has been found. In such circumstances, the Public Guardian should consult with the Director to file a motion with the court to amend or terminate the guardianship.
- h. At each monthly client visit, the Public Guardian is responsible for updating the completing Individualized Guardianship Plan. The Public Guardian is responsible for updating the information in the Case Management System and in the Individualized Guardianship Plan. The document will be secured and stored as per OPG Policy.
- i. Should a client move, the Public Guardian shall notify the Staff Assistant and Director immediately. The Public Guardian is responsible for updating the information in the Case Management System. The Staff Assistant will prepare a Change of Address form and file it with the court.
- j. A client may not be moved out of the state of Colorado without prior court approval.

### **Policy 6.8. Ongoing Case Monitoring and Management**

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, VI, VIII; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

a. **Person-Centered Planning**

- i. The Public Guardian will engage the client in an interview to determine the client's goals, strengths, preferences, and needs, to best tailor services towards the needs of the client. The Public Guardian will guide services towards the client's expressed wishes, hopes, and aspirations. Person-centered planning should reflect the wishes of the client in all aspects of their life to allow the client to live as independently as possible.
- ii. The Public Guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal, financial goals, needs, and preferences of the person, while placing the least restrictions on the person's freedom, rights, and ability to control their environment. The Public Guardian will work with the client and service providers towards assessing the client's current and future medical, mental health, and other critical needs. The Public Guardian will collaborate with providers to determine the client's pertinent issues to address and will establish a timeline and target dates towards the completion of the recommended interventions.
- iii. The Public Guardian shall consider and carry out the intent of the Person prior to incapacity to the extent allowable by law. Through ongoing engagement with the client and their health care providers, the Public Guardian will continually assess for the client's health and safety.
- iv. The Public Guardian shall weigh the risks and benefits and develop a balance between maximizing independence and self-determination of the person and maintaining the person's dignity, protection, and safety. The Public Guardian will work with the client to establish short-range and long-range goals. The Public Guardian will identify the necessary supports for the client to reach their goals and will assist the client with creating an action plan with target dates to meet each of their goals.
- v. The Public Guardian shall make individualized decisions and will maintain a standard of practice that promotes dignity and respect.
- vi. The Public Guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect the person, to act on their own behalf in all matters in which the person is able to do so.
- vii. The Public Guardian shall make and implement an Individual Guardianship Plan that seeks to fulfill the person's goals, needs, preferences, and least restrictive alternative.

viii. The Public Guardian will engage the client in creating a crisis prevention and crisis response plan that is tailored to the client. This plan will include an inventory of symptoms or behaviors that may trigger the onset of a crisis, prevention and early intervention strategies, and plans for response and stabilization.

**b. Least Restrictive Alternatives**

- i. The following guidelines apply in the determination of the least restrictive alternative: The Public Guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
- ii. The Public Guardian shall strive to know the person’s goals and preferences.
  - i. The Public 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.
  - ii. The Public Guardian shall determine the extent to which the person identifies their ethnicity, religious beliefs, cultural values, and sexual orientation.
- iii. The Public Guardian shall also consider the following and complete an individualized “Five Wishes” template:
  1. The person’s attitudes regarding illness, pain, and suffering;
  2. The person’s attitudes regarding death and dying;
  3. The person’s views regarding quality of life issues;
  4. The person’s views regarding societal roles and relationships; and
  5. The person’s attitudes regarding funeral and burial customs.

**c. Standards for Decision-Making**

Decision-making is the fundamental responsibility of a Public Guardian. The obligation of a Public Guardian to make reasoned and principled decision remains constant. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

Acting within the scope of the Order and Letters of Guardianship, the Public Guardian has authority to make legally binding decisions on behalf of the ward. These decisions are broad in scope and may involve the ability to control fundamental aspects of the life of another human being. The authority of a Public Guardian may encompass the ability to make decisions concerning the treatment and care of the ward, where the ward shall live, and the exercise of the legal rights of the ward.

In light of these broad and far-reaching powers, the Public Guardian has an obligation to make well-reasoned decision and ensure no undue harm befalls the ward.

A Public Guardian shall refrain from decision-making in areas outside the scope of the Order of Guardianship and, when necessary, assist the ward by ensuring that such decisions are made in an autonomous fashion. Furthermore, the Public Guardian must recognize that the ward may be entitled to make legally binding decisions independent of the Public Guardian. Upon the request of the ward in making such decisions by ensuring that the ward is free from undue influence and has access to as much information as possible concerning the alternatives and likely outcome of his or her decision.

1. **Surrogate Decision-Making.** The Public Guardian may make all reasonable efforts to ascertain the preferences of the ward, both past and current, regarding all decisions which the Public Guardian is empowered to make. The Public Guardian shall make decisions in accordance with the ascertainable preferences of the ward, past and current, in all instances except those in which a Public Guardian is reasonably certain that the substantial harm will result from such a decision. The obligation to inform and involve the ward in decision-making increases in direct proportion to the significance of the decision.
  - a. The relative significance of the decision must be made from both an objective and subjective point of view. That is, a Public Guardian must recognize that the obligation to inform and involve the ward in decision does not only increase when the decision is fatally significant (i.e. consent to a major surgery); the Public Guardian must also view the decision from the ward's point of view. For example, a request by a nursing home for permission to relocate a ward to a different room may appear minor to the Public Guardian, but may, in fact, be critical to the ward. This underscores the importance of the Public Guardian forming as close of a personal relationship with the ward, his or her caregivers, as is possible under the circumstances.
2. **Substituted Judgment.** The principal of substituted judgment requires the surrogate to attempt to read the decision the incapacitated person would make if

that person were able to choose. The ability of the Public Guardian to ascertain the ward's preferences may vary according to both the type and nature of the ward's disability or incapacity.

3. **Best Interest.** The Model Code of Ethics for Guardian's position is that the use of the best interest standard is a last resort, to be utilized only in cases where there is no previous competency or where the ward gave no indication of preference which could guide the Public Guardian in making the decision.

**d. Informed Consent**

- i. The Public Guardian shall make decisions in conformity with the preference of the person when providing consent for the provision of care, treatment, and services *unless* the Public Guardian is reasonably certain that such decisions will result in substantial harm to the person. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
- ii. When the preferences of the person cannot be ascertained or will result in substantial harm, the Public Guardian shall make decisions with respect to care, treatment, and services, which as in conformity with the best interest of the person.
- iii. In the event the only available treatment, care, or services is not the most appropriate or least restrictive, the Public Guardian shall advocate for the person's right to a more desirable form of treatment, care, or services, retaining legal counsel to assist if necessary.
- iv. The informed consent doctrine is independently relevant to the Public Guardian's role as the health care decision-maker, as it is the starting point in the process of decision-making in the health care realm.
- v. The Public Guardian shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed treatment, care, or services represent the least restrictive form of intervention available.
- vi. The Public Guardian shall **NOT** consent to sterilization, electro-conversion therapy, or experimental treatment, forced psychotropic medications, or service without seeking review by the court or the person's attorney or other representative.

- vii. As per § C.R.S. 15-14-316 (4):
- i. A guardian may not initiate certification of a ward to a mental health care institution or facility except in accordance with the state's procedure for involuntary treatment and evaluation of a mental health disorder pursuant to article 65 of title 27. To obtain hospital or institutional care and treatment for a ward's mental health disorder, a guardian shall proceed as provided under article 65 of title 27.
  - ii. To obtain services and supports from an approved service agency as defined in section 25.5-10-202 for a ward with intellectual and developmental disabilities, a guardian shall proceed as provided pursuant to article 10 of title 25.5.
  - iii. To obtain care and treatment for a ward's substance abuse disorder, a guardian shall proceed as provided pursuant to articles 81 and 82 of title 27.
  - iv. A guardian shall not have the authority to consent to any such care or treatment against the ward's will.
- viii. Exceptions to Informed Consent. Generally, there are three exceptions to informed consent:
1. **Emergency Exception.** "If informed consent is suspended in an emergency, it should be because the time it would take to make disclosure and obtain patients' decision would work to the disadvantage of some compelling interest of patients...[such] an emergency situation...would involve the following factors:
    - a. There must be a clear, immediate, and serious threat to life and limb;
    - b. The treatment that will be provided without informed consent should be the one that...is in keeping with the standard of practice; and
    - c. The time it would take to offer an informed consent would significantly increase the patient's risk of mortality and morbidity, either because these are presently occurring, or because the effectiveness of a given treatment will be significantly diminished is not immediately instituted."
  2. **Public Health Emergencies Exception.** "Public health emergencies can sometimes justify the state in demanding that certain treatments – for example, vaccinations to prevent pandemics or treatments to stop the spread of particularly dangerous contagious diseases – be imposed on patients over their objection."
  3. **Psychiatric Treatment Exception.** A psychiatric treatment exception may be available because "a failure to treat mental illness can result in harm to the patient or others so there are situations in which mentally ill patients can be forced to receive unwanted medical treatment. These cases require that the patient receive certain due process protections through civil commitment statutes. Accordingly,

the psychiatric treatment exception to informed consent requires the intervention of a court before the patient’s right to direct their own medical treatment can be set aside in favor of more compelling state interests.”

### **Policy 6.8.1. Medical Decision-Making**

- a. 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 a guardianship. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship, and ensure that all medical care for the person is appropriately provided and that the person is treated with dignity. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care decision-making. The ward’s family situation, or their ethnic, cultural and religious backgrounds can provide information to the guardian in making decision on medical treatment goals and preferences. “Whether a guardian’s fiduciary obligation is statutorily defined as a best interest or substituted judgment standard, the guardian’s mission—and challenge—is to use her authority to make medical decisions in a manner that reflects the preferences, values, and goals of the ward. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
- b. 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. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. Even significantly compromised wards may have ways to communicate values and preferences that are relevant to medical decision-making.
- c. In situations where the ward is unable to provide any indication of prior or current preferences, and reliable or relevant background information does not exist or is not forthcoming, the guardian is responsible for making a decision which is in the best interest of the ward. The guardian should consider what choice or decision a reasonable person in similar circumstances would make.



- d. A guardian should not wait until a medical crisis occurs to gather information that might be needed to perform duties. 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.
- e. 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 expresses the person's wishes with respect to a medical intervention)- a guardian may not grant or deny authorization for medical intervention until he or she has: 1) assessed the available information regarding the ward's health care preference; 2) given careful consideration to the criteria under **Informed Consent** (exercising the ward's right to informed consent) and 3) **Decision-Making** (substituted decision and best interest criteria) and 4) consulted with the Director of the Colorado Office of Public Guardianship.
- f. 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. The guardian shall seek to ensure that appropriate palliative care is incorporated into health care, unless not in accordance with the person's preferences and values.
- g. 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 of Informed Consent and Decision-Making and the time allotted by the emergency, and in accordance with the Colorado OPG policy.
- h. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment. 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.

- i. Additionally, especially under extraordinary medical circumstances, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and in accordance with the Colorado OPG policy.
- j. The Public Guardian, in making health care decisions or seeking court approval for a decision, shall:
  - Acquire a clear understanding of the medical facts;
  - Acquire a clear understanding of the health care options and the risks and benefits of each option,
    - 1. “The likely outcome or prognosis if the ward is left untreated.
    - 2. The likely outcome of alternative treatments that might be available.
    - 3. The risk of adverse side effects from the proposed treatment as compared with no treatment and with alternative treatments.
    - 4. The intrusiveness of the proposed treatment as compared with no treatment or with the alternatives.
    - 5. Whether the ward is capable of participating fully in any post treatment therapy that might be required following the proposed treatment.”
  - Maximize the participation of the person; encourage and support the individual in understanding the facts and directing a decision:
    - 1. “provide the ward with every opportunity to exercise those individual rights that the w/pp might be capable of exercising...”
    - 2. The imprecise concept of “incapacity” and its fluid nature means that a wards’s ability to participate in health care decision-making may or may not be evident and may or may not exist with respect to any particular medical decision.
    - 3. “The guardian should always respect the ward’s autonomy to the degree reasonably allowed by the ward’s cognitive abilities *at the time the decision must be made*. This is no easy task and demands that the guardian be sensitive to the ward’s level of capacity to participate in a discussion of risks and benefits, the consequences of treatment versus nontreatment, and the extent to which the ward might, if he or she had the capacity, rely on the input of family members, friends, or other important persons in the ward’s life.”
  - Implement the substituted judgment standard with respect to a health care decision using:

1. “Any past statements made prior to the onset of incapacity (oral or written, contained in an advance directive for health care or otherwise) regarding health care generally, specific treatment options, or recently articulated preferences, including statements made after the judicial determination of incapacity.
2. Statements must be accorded a weight that is appropriate given the ward’s capacity to understand the nature and consequences of the proposed treatment.
3. The ward’s actual or likely religious or moral views regarding medical care or the dying process. Such views can be inferred not only from the ward’s past or current statements or conduct, but also from her cultural, religious, and ethnic background.
4. The ward’s past or current expressed concerns for how particular medical decisions and treatments will affect family and friends’ well-being.
5. The opinions and preferences of family or other individuals, and the values of the ward’s cultural community, if there is reason to believe that the ward would have considered or relied upon such opinions and values”

- k. If the guardian cannot determine the ward’s prior wishes then medical determination is made implementing the best interest standard.

The best interest standard is comparable to the reasonable person standard...

The range of available treatment options and the risks, side effects, and benefits of each of the options:

- The patient’s past and present level of physical, sensory, emotional, and cognitive functioning
- The ward’s potential life expectancy with and without treatment
- Whether the proposed treatment will sustain the status quo
- The degree of physical pain resulting from the medical condition, treatment, or termination of treatment
- Whether pain management can mitigate the ward’s potential suffering resulting from treatment or nontreatment
- The degree of dependency and loss of dignity resulting from the medical condition and treatment
- Best interest standard does not mean the guardian can impose the guardian’s personal values upon the ward....
  - Unless the guardian has a preexisting, long-term and familial relationship with the ward, “best interest” is not what the guardian’s concept of what is “best” for the ward as a substitute for a careful evaluation of the factors outlines.

- A guardian’s personal predilections, beliefs, or other considerations that prevent him or her from advocating fully and powerfully on the ward’s behalf should seek appointment of an alternative guardian.
- I. In processing medical decision-making, the Public Guardian shall complete the following forms, when applicable:
- i. Contacting the Colorado OPG Cover Letter*
  - ii. Medication Approval Form*
  - iii. Treatment Approval Form*

These forms shall be incorporated into the Individualized Guardianship Plans as necessary. Documents shall be secured and stored as per OPG policy.

- m. The Public Guardian may not authorize non-emergency, extraordinary procedures without prior authorization from the court unless the person has executed a living will or durable power of attorney for health care 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.
- n. Review Questions to Ask from *The Caregiver’s Path* (handout) to assist you in obtaining all necessary information

## Policy 6.8.2. End of Life Matters

“The formal “constitutionalizing” of patient autonomy in health care decision-making is generally traced to the New Jersey Supreme Court’s decision in *In re Quinlan*<sup>1</sup>. The court, under the New Jersey constitution, found that a right to privacy existed and this right was broad enough to encompass a right to refuse “extraordinary” medical procedures, including artificial respiration....Fifteen years later, In *Cruzan v. Director, Missouri Department of Health*,<sup>2</sup> the United States Supreme Court implicitly acknowledged that the right to autonomy in health care decision-making is protected by the Fifth and Fourteenth Amendment due process clauses of the federal Constitution... The sum and substance of the Court’s opinion in *Cruzan* ...is that “a competent person has a right, well settled at common law and grounded in federal due process rights, to refuse medical treatment, including life-sustaining artificial hydration and nutrition”. In addition—and it is this aspect of *Cruzan* that has the most significance to guardianship law—a majority of the Court indicated that surrogate decision makers are bound to honor and enforce, not their own perspectives on medical treatment and life-sustaining treatment, but rather those of the incapacitated persons in their charge. “<sup>3</sup>

“The *Quinlan* and *Cruzan* cases are most commonly discussed for their important conclusions that the right of autonomy in health care decisions has constitutional dimensions under both state and federal constitutional law. One of the most critical implications of these and similar cases for guardianships, however, is something rarely addressed in the literature discussing them. *Quinlan* articulates the principles that the informed consent doctrine applies to all health care decisions, including end-of-life decisions, and that surrogate decision-makers have a legal obligation to make such decisions as the ward would, and not according to some external standard existing independently of the ward’s desires. *Cruzan* suggests that, in the context of health care decision-making, a ward’s “best interests” are the interests that the ward herself would assert were she capable of doing so. The state may, in effect, erect a presumption that patients opt for treatment in most cases, even in situations such as Nancy Cruzan’s, in order to further the abstract principle that life is worthy of state protection no matter what its “quality.” But when a patient’s preferences can be established to the degree of certainty represented by the applicable evidentiary standard, no one—not the ward’s family or friends, nor her guardian, nor even the state—should impose treatments that the ward herself would not authorize.

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<sup>1</sup> 355 A.2d 647 (N.J. 1976).

<sup>2</sup> 497 U.S. 261 (1990).

<sup>3</sup> Kim Dayton, *Standards for Health Care Decision-making: Legal and Practical Considerations*, 2012 Utah L. Rev. 1329, 1342 (2012).

Many states describe the guardian's fiduciary obligation as an obligation to act in "the best interests of" the protected person.<sup>4</sup> *Quinlan* and *Cruzan* lead to the conclusion that state law "best interest" standards governing guardian's decision making must be interpreted as substituted decision-making standards *at least with respect to health care decisions.*"<sup>5</sup>

"In hard cases, therefore, the challenge for the guardian is not to determine whether a particular treatment is in the ward's "best interests," but rather what the ward would want if she were able to articulate her preferences...In short, the constitutional imperatives developed in the state court decisions on medical decision-making, as well as *Cruzan*, require use of a substituted judgment standard with respect to all health care decision-making unless there is no possible way to infer the ward's likely treatment preferences."<sup>6</sup>

When making a determination of whether a ward has articulated his or her preference previously the highest standard of evidence is the subjective standard. It requires evidence that the patient expressed his or her wishes concerning life-sustaining treatment in a situation comparable to his or her current situation. Under this standard, statements by the patient must be specific, not casual, and must not be too far removed from onset of the patient's condition. In *Cruzan*, the Missouri Court of Appeals found that statements by the incapacitated person's friends, sister, and mother, relating conversations in which the person generally expressed the view that she would not want to be kept alive on life-support systems, were not adequate proof of her views. The United States Supreme Court upheld that determination, finding that the requirement of clear and convincing evidence to prove the person's intent did not violate the federal Constitution."<sup>7</sup>

The substituted judgement standard, as discussed above, is based on the patient's wishes. Unlike the subjective standard the determination of the ward's wishes need not be a specific declaration concerning the patient's situation, but can be evidence from which an inference is drawn about those wishes. General statements can be used as evidence, weighted by supporting factors such as recent statements, the patient's age, probable side effects of the treatment, likelihood the treatment will cause suffering, patient's reaction to medical treatment of others, patient religious beliefs and patients' prognosis with and without treatment.

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<sup>4</sup> Whitton & Frolik, *supra* note 2, at 1504; see Christine Jensen, *50-State Statutory Survey: Health Care Decision-Making by G/cs* (Sept. 2011) (contained *infra* at Appendix B).

<sup>5</sup> Kim Dayton, *Standards for Health Care Decision-making: Legal and Practical Considerations*, 2012 Utah L. Rev. 1329, 1344 (2012).

<sup>6</sup> *Id.* 1347

<sup>7</sup> 40 Am. Jur. Proof of Facts 3d 287 (2007) as researched by Kiahtipes, Dominique June 25, 2015

Whether a client was competent when making statements will impact the weight of the evidence of the patient's wishes in implementing substituted judgement. A client who made statements to forgo life sustaining treatment when competent and has moved into a state of incapacity would have more weight than a client who apparently was never competent, such as those with developmental disabilities. In cases of questionable competency of the ward, courts generally move to the "best interest" standard.

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24

**a. Palliative Care**

It may be appropriate to incorporate palliative care for persons with serious illnesses when it is in accord with the person's wishes. Palliative care is specialized care that treats the discomfort, symptoms, and stress of that illness. The focus is to provide relief from such symptoms as pain, shortness of breath, fatigue, constipation, nausea, loss of appetite, and problems with sleep. It may also help with the side effects of some medical treatments.

**b. Hospice**

End-of-life care hospice is paid for by Medicare Part A at 100%. Medicare outlines the make-up of the interdisciplinary hospice team that includes a medical doctor, nurse case management, Chaplin, and social worker. Hospice reimbursement is fixed at a maximum dollar amount regardless of the level of care provided by hospice. Medicare hospice is a six-month benefit. Two doctors are to certify that the prognosis is six months or less. It's called the certificate of terminal illness. There are four kinds of Medicare services.

1. The basic care is called "routine level of care." The patient can be seen daily to every 14 days.
2. The second level is "respite care." Usually Medicare beneficiaries do not qualify for skilled nursing care unless having previously been in acute-care hospital for at least 72 hours, respite care hospice is an exception. An individual can be given five days of nursing care paid for by hospice at the nursing home without the initial acute-care hospitalization stay.
3. Continuous care for comfort care is the third level of care, it enables a combination of nursing and certified nursing care.

4. The fourth level is called general inpatient care, it allows Medicare accredited hospital or skilled nursing facility to be paid under specific criteria.

**c. Withholding and Withdrawing Medical Treatment**

Always presume to continue medical treatment. However, there are circumstances in which consent to withhold or withdraw medical treatment is legal and ethically justifiable.

In these situations, the Public Guardian should follow the wished of the person as currently expressed or previously stated in an advance directive. Any inconsistency in the person's wishes should be presented to the Ethics Committee or it may be necessary to ask the court for direction after discussion with the Director of the Colorado Office of Public Guardianship. The Public Guardian should follow the principles of informed consent when making this decision on behalf of the person. Standard 15.

**d. Physicians Order for Life Sustaining Treatment (POLST)**

POLST programs were developed so that healthcare providers and patients have end of life conversations. POLST are meant to improve the quality of care that people receive the end of the life and provide effective communication regarding patient desires and comprehensive documentation of medical directives.

A POLST complements, rather than replaces, an advance directive. It records in detail the decisions the patient makes and puts those decisions into medical orders to be followed in a medical crisis. The form is printed on brightly colored paper so it can be readily seen, followed, and transferred with the patient from hospital to nursing facility and back to the hospital.

Groups in Colorado have endorsed POLST and is working on statewide adoption. The Colorado Advance Directives Consortium is the main resource with forms for use: <http://www.coloradoadvancedirectives.com/index.html>.

**e. Do Not Resuscitate Orders (DNR) and Cardiopulmonary resuscitation (CPR)**

Medical do not resuscitate order (DNR), is an order that instructs healthcare professionals not to resuscitate if a person's heart stops for the individual stops breathing. DNR is a narrow scope document focused on cardiopulmonary arrest or a pre-arrest emergency due to a chronic condition. A DNR is signed by a doctor and is a medical order and placed in the person's medical record.



Consent from the person or the guardian is required for entry of a DNR order. It is not an advance directive. A DNR order may be appropriate for an individual who is critically or terminally ill. An individual who is physically healthy but disabled should not have a DNR order.

#### **f. CPR for Older Adults**

<https://dailycaring.com/the-reality-of-cpr-for-seniors-get-the-facts/>

CPR means pushing down into the chest at least 2 inches deep and at least 100 times per minute. The pounding on the body usually results in major physical trauma. This trauma often includes broken ribs, lung bruising, damage to the airway and internal organs, and internal bleeding.

Patients who receive CPR also have to deal with serious long-term consequences like possible brain damage from oxygen deprivation. The existing health conditions of seniors make it even less likely that they will recover at all or have reasonably good quality of life.

Research (<https://well.blogs.nytimes.com/2014/07/17/the-cpr-we-dont-see-on-tv/>) suggests that only 10 - 20% of **all** people who get CPR will survive and recover enough to leave the hospital. For chronically ill elderly patients, a study (<https://www.nejm.org/doi/full/10.1056/NEJM199402243300807#t=articleResults>) has shown a less than 5% chance of surviving long enough to leave the hospital after receiving CPR.

#### **g. Death with Dignity Laws**

<https://www.deathwithdignity.org/learn/access/>

Death with Dignity laws allow qualified terminally-ill adults to voluntarily request and receive a prescription medication to hasten their death. As of September 2019, aid in dying statutes are in effect in Colorado.

To be eligible, a client must be mentally competent, i.e. capable of communicating their health care decisions.

Should a Death with Dignity situation arise, the Public Guardian and Director will staff the case with the hospital's Medical Ethics Committee. If necessary, the Public Guardian and Director will staff the case with the Colorado OPG Internal Ethics Committee.

#### **h. Funeral and Burial Arrangements**

If the ward has not made final funeral and burial arrangements prior to guardianship, the Public Guardian should attempt to determine the person's preferences about final disposition of the body, funeral services, and burial arrangements.

This can be accomplished by consulting with the ward. In addition, the Public Guardian should use the Social History Survey, 5 Wishes, and consultation with individuals with knowledge of the ward.

When the ward has sufficient funds or assets that need to be spent down to qualify for benefits, it is best practice to purchase a prepaid burial plan. Funds set aside to cover these expenses are usually not counted as assets and therefore does not make the ward ineligible for Medicaid. However, there are amount limits to be aware of.

### **Policy 6.8.3. What to do When Your Client Dies**

This information is adapted from the CBA publication "What to do When Someone Dies."

#### **a. At Time of Death**

***If the death occurred in a hospital, nursing home, or assisted living facility:*** The medical or facility staff will make the pronouncement of death and will contact you to assist in the completion of paperwork for organ or body donations and to coordinate with the mortuary or crematory for transport of the body. Since a guardian's authority to act terminates upon the death of a ward, technically, you are not responsible for making such decisions, so it is best for you to contact family or friends to complete the burial or funeral arrangements.

***If the death occurred in at home – Pronouncement of Death:*** Colorado requires a qualified medical professional to be notified and to make the official pronouncement of death. If the death is unattended, call the family physician, hospice provider, or the County Coroner's Office for the county in which the death occurs. Some counties also need you to notify law enforcement.

**Denver County Coroner's Office** and adapted information:

<https://www.denvergov.org/content/denvergov/en/environmental-health/our-divisions/office-of-the-medical-examiner.html>

### **Denver County Coroner's Office - Reportable Deaths**

The Denver Office of the Medical Examiner/Coroner's Office, as a guardian of the health, safety and welfare of the community, constantly strives toward the goal of a safer and healthier community. The Medical Examiner/Coroner is a constitutional office pursuant to the Constitution of Colorado. Colorado Revised Statute, 30-10-606, defines which deaths are reportable to the Medical Examiner/Coroner's Office.

The following deaths are reportable (by telephone **720-337-7601**) to the Denver Office of the Medical Examiner/Coroner immediately after pronouncement of death.

- All patients that expire within 24 hours of admission.
- All deaths in which the attending physician has not been in attendance of the decedent within 30 days prior to death. If the physician certifying the cause and manner of death on the death certificate has not been in attendance within the 30 days prior, the death must be reported to the Denver Office of the Medical Examiner.
- All deaths resulting from accident, suicide, homicide, or undetermined cause and/or manner (e.g. fall, poisoning, drug related, industrial accident, automobile accident, automobile-pedestrian accident, suspected abuse, etc.).
- All deaths that occur in the emergency room, operating room, during or shortly following a medical procedure.
- Deaths resulting from therapeutic procedures, or possibly may be related to the procedure.
- Deaths resulting from thermal, chemical or radiation injury.
- All deaths in which the attending physician is unable or unwilling to certify the cause of death.
- All deaths due to unexplained causes or under suspicious circumstances.
- Deaths resulting from a disease which may be hazardous, contagious, or which many constitute a threat to public health. Chronic Hepatitis C is not reportable.
- Sudden death of a person in good health.
- All death in which trauma may be associated with the death (e.g. fall with hip fracture, head injury or other trauma). Cases where the patient entered the medical facility due to trauma. Cases should be promptly reported even though the death may be attributed only indirectly to the trauma.
- All deaths while in the custody of law enforcement officials, or while incarcerated in a public institution.

- All deaths resulting from criminal abortion, including any situation where such abortion may have been self induced.

### **Denver County Coroner's Office - Reporting Procedures**

Deaths which do not fall within our jurisdiction do not need to be reported. If a death is reportable, please notify our office promptly. An investigator can be reached 24 hours a day, 7 days a week at **720-337-7601**. Please leave a message if no one answers. Your call will be forward to an investigator who will return your call as soon as possible.

Please have the following information when reporting hospital cases:

- Demographic information such as name, date of birth, ethnicity, gender, marital status, social security number and address of decedent
- Next of kin information including name, address, phone number and time/date of notification of death.
- Place of death
- Admission information including date/time of admission and from where transferred (e.g. private residence, other medical facility, etc.).
- Past medical history
- Pronouncement information including date, time and physician's name

**For nursing home and hospice reportable cases**, in addition to the above information, please have the following:

- Primary care physician name and phone number
- Date of last visit with the primary care physician

***Notify the Director and Staff Assistant of Death:*** Provide the following information and the Staff Assistant will complete a Notice of Death within 3 business days:

- ✓ Ward's name
- ✓ Date of death
- ✓ Confirm that all Interested Parties (IP) are appropriately completed in the Case Management System

The Staff Assistant will have the guardian verify the form before filing it with the Probate Court within 3 business days.

***Organ and Body Donations:*** Notify the medical professional of any organ or body donations so the professional can assist in making appropriate arrangements. Leave the medical equipment turned on or in place unless you are instructed otherwise by medical

or hospice personnel.

**Arrange for the Ward's Body:** Arrange for the body to be picked up:

- According to the Coroner's instructions
- According to the instructions from a hospital if the body or organs are donated
- By the mortuary or crematory

**Powers of Attorney:** Be aware that an agent authorized by a Power of Attorney does not have authority to act if the principal (ward) had died.

#### **b. One to Three Days after Death**

**Notify the SSA Representative Payee and/or VA Fiduciary:** Instruct the family that your authority has ended and provide them with the information needed to complete arrangements.

**Notify Family and Friends:** Instruct the family that your authority has ended and provide them with the information needed to complete arrangements. The Red Cross will help notify family members if the deceased was in the military or if the relative to be notified is in the military.

**Red Cross Emergency Communication:**

<https://www.redcross.org/get-help/military-families/emergency-communication.html>

**Provide Ward's Instructions and documentation to Family and Friends and Representative Payee and/or VA Fiduciary:**

- Prepaid burial plan
- Will
- Member of a memorial or funeral society
- Written instructions as regarding funeral arrangements (5 Wishes or Social History Survey)
- Trust information
- Life insurance policies
- Pension, IRA, retirement statements
- Income tax returns
- Marriage, birth and death certificates
- Divorce papers
- Military records and discharge papers
- Account statements

- Motor vehicle titles
- Deeds, deeds of trust, mortgages
- Stock or bond certificates or CDs
- Health insurance papers
- Unpaid bills

***Complete the Funeral and Burial Arrangements:*** Assist the family or friends as needed. If the ward has no one else, the guardian will need to complete the arrangements. The guardian may need to coordinate with the Representative Payee to pay, or apply, for, funeral and burial services.

***Financial Assistance:*** If the ward was on public assistance, burial assistance may be available. Contact your local county Department of Social Services as soon as possible. Total expenses for burial will be limited in order to qualify for the financial assistance.

Contact fraternal and religious organizations that may conduct funeral services and other organizations of which the ward was a member. If the ward was in the military or is the spouse or a dependent child of a person in the military, contact the VA cemetery or the VA about possible burial benefits. The mortuary will call the VA at your request. If you have concerns that you cannot resolve with the management of a funeral home, contact the **Colorado Funeral Directors Association at: 303.791.2336.**

***Other Guardian Duties:***

- Care for pets
- Take steps to secure the ward’s property, home, vehicles

**c. One to Ten Days after Death**

***Death Certificates:*** The most common and quickest way to obtain death certificates is through the funeral director. There is a fee for each death certificate, so you may need to coordinate with the Representative Payee. Death certificates can also be obtained through Vital Statistics Department in the county where the death occurred, or through the Colorado State Department of Public Health and Environment, Vital Records Office.

**Denver County Vital Statistics Department:**  
<https://www.vitalrecordscertificates.com/death>

**Colorado State Department of Public Health and Environment, Vital Records Office:**  
<https://www.colorado.gov/cdphe>

## **Policy 6.8.4. Alternatives to Guardianship**

Oftentimes, an individual would be better served by exploring alternatives. A guardian screening process might steer eligible persons toward less restrictive alternatives. The National Guardianship Association Ethical Principle 3 calls for a guardian to be considered by the court as a last resort, when less restrictive alternatives are inappropriate. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

### **a. Advance Directives**

Advance directives in federal law is found at 42 C.F.R. 489. Section 489.100 defines the term "for purposes of this part, advanced directive means a written instruction, such as a living will or durable power of attorney for healthcare, recognized under State law, relating to the provision of healthcare when the individual is incapacitated.

A health care agent named by the ward in a valid health care directive has priority over a guardian with regard to all health care decisions explicitly or implicitly addressed in the directive. The ward should be presumed to have chosen an agent who understands and is capable of expressing the ward's preferences. Honoring this choice is an aspect of furthering the patient's autonomy notwithstanding current incapacity.

### **b. Durable Powers of Attorney and Health Care Power of Attorney**

Power of attorneys are legal documents that allow one person, as the principal, the ability to allow another person, the agent or attorney-in-fact, to act for them. The agent is authorized for almost any action for the principal as long as that action is included in the powers of attorney document. It is important that a power of attorney be drafted so the activities the principal would like to delegate to the agent is addressed in the document.

"Durable "power of attorney continues in effect after the principle becomes incapacitated and is unable to supervise and direct the agent. Powers of attorney that are durable can be immediate or springing. An immediate power of attorney takes effect upon signing, a springing power of attorney does not take effect until the principle becomes incapacitated. In a springing durable health care power of attorney it is important to take careful note that the statutory legal definitions and the medical terms describing standard medical practices are aligned in the durable power of attorney for health care to ensure that the intent is carried out upon the "springing" qualifying condition.

A power of attorney for healthcare should include clear language and have a definitive declaration of a principal's opinion regarding life sustaining treatment in order to delegate medical decisions to the agent and is essential for assisting the agent in taking appropriate actions for the principle.

An agent under a power of attorney trumps a guardian with respect to the exercise of any powers covered by the power of attorney. This is because courts defer to the person who was nominated by the person with alleged disabilities at a time when the person was not under a disability. Healthcare power of attorney takes precedence over the guardianship when determining medical care under the same rationale.

**d. Living Wills**

A living will is a document that sets forth an individual's choice for future medical decisions, such as the use of artificial life support and helps to instruct health providers of the individual's desires. In most jurisdictions the purpose of living wills was to codify the right of terminally ill patients whose prognosis was grim (typically, those with a life expectancy of three to six months) the option to refuse curative treatment altogether. Patients who opted to execute living wills under these statutory provisions usually experienced a more comfortable and natural dying process, often accompanied by aggressive pain management.

It is important that an individual put in writing within the advance directive, living will, the level of intervention desired at the end of life. In a living will it is important to take careful note that the statutory legal definitions and the medical terms describing standard medical practices are aligned to ensure that the intent is carried out upon qualifying condition. Qualifying conditions are the conditions that trigger a living will to become effective. A living will only takes effect when two doctors certify in writing that the person is irreversibly ill or critically injured and near death.

**e. Designation of a Representative Payee or VA Fiduciary**

An individual may need assistance handling funds and paying expenses while not meeting incapacity standards warranting a guardianship. The Social Security Administration (SSA) may determine that the individual needs a Representative Payee to receive and use SSA benefits on behalf of the individual.

If an individual receives Veteran's Administration (VA) benefits, the VA may determine that the individual needs a Fiduciary to receive and use VA benefits on behalf of the individual.

**f. Colorado Proxy Decision-makers for Medical Treatment Act**



The “Proxy Decision-makers for Medical Treatment Act” is intended to be used to make medical decisions on behalf of someone when no advance directive has been made, when there is no current guardian and when only medical treatment decisions are required. It is applicable for all adults regardless of the nature of a disability or illness and prevents the need to obtain guardianship in many cases. The procedure is authorized by Colorado statute. (C.R.S. 15-18.5-101 et.seq.)

Adapted from : <https://www.abilityconnectioncolorado.org/blog/guardianship-alliance/proxy-decision-makers-for-medical-treatment/>

The Proxy Decision-makers process **is not an advance directive and must not be established upon admission to a long-term care facility or hospital.** It may be followed for a decisionally impaired adult if all of the following conditions exist:

- Decisions are needed for medical treatment. “Medical treatment means the provision, withholding, or withdrawal of any health care, medical procedure, including artificially provided nourishment and hydration, surgery, cardiopulmonary resuscitation, or service to maintain, diagnose, treat, or provide for a patient’s physical or mental health or personal care.” (C.R.S. 15-14-505-(7)).
- A physician has determined that the patient lacks decisional capacity to provide informed consent to or refusal of medical treatment. Decisional capacity means the ability to provide informed consent to or refusal of medical treatment. To give informed consent the patient must be given all relevant information pertinent to the decision and be able to:
  - Recognize that a decision is needed.
  - Process the information, i.e. discuss it, remember it, evaluate the various factors, understand the consequences.
- The patient has not made any Advance Directives such as a Living Will and/or Medical Durable Power of Attorney.
- The patient does not have a guardian.
- The patient has an interested person or persons, i.e., a spouse, parents, adult children, sibling or grandchildren or a close friend, involved in his/her life.
- An interested person is available and able to serve as a proxy decision-maker.

#### **g. Intervention Techniques**

An individual may be successful with other intervention techniques or services such as respite support, counseling, or meditation. A Public Guardian should investigate and

consider whether such techniques or services would be least restrictive for a client.

### **Policy 6.8.5. Characteristics of Populations Served**

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V - VIII; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

#### **a. Intellectual and Developmental Disabilities**

- i. “Developmental disability” means a disability that has manifested before the person reaches twenty-two (22) years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "Developmental Disability" found in 42 U.S.C. 6000, et seq., shall not apply.
- ii. A person with an “intellectual disability” has an IQ below 70 and significant limitations in adaptive behavior.
- iii. A child with development disability may need a guardian upon reaching majority at age 21.
- iv. There are different degrees of intellectual disability ranging from mild to profound. Intellectual disabilities vary in degree and effect. It is important not to make generalizations about the needs or capabilities of such individuals. Studies show that somewhere between one percent and three percent of Americans have intellectual disabilities. It is also notable that the lifespan of people with It is also notable that the lifespan of people with intellectual disabilities and developmental disabilities is increasing, and some may experience problems common to older people.
- v. An individual with development disabilities is likely to have changing needs as the years go by, and may have expanding capabilities, based on the level of habilitative services available in the community. A Public Guardian needs to monitor services being provided, develop an on-going relationship with service providers and attempt to maximize opportunities

for the client's personal growth. Such a client may benefit from a series of placements, depending upon the success of habilitation efforts, each less restrictive than the last, and each allowing more independent functioning than the last. It is incumbent on the Public Guardian to encourage personal growth, rather than simply allow the client to remain static.

vi. **Colorado Department of Human Services (CDHS), Division for Developmental Disabilities.** <https://www.rmhumanservices.org/> . The Rocky Mountain Human Services provides information about services provided:

**vii. Services for Adults**

1. Behavioral health transition services
2. Case Management: DD Waiver Services
3. Case Management: Supported Living Services
4. Residential services

**viii. Services for Veterans**

1. Homelessness prevention
2. Housing referrals
3. Short term case management
4. Navigation of benefits system
5. Referrals to other benefits and services

ix. **Community Centered Boards (CCB)** make the determination of whether an individual meets the Colorado definition for development or intellectual disability. There are two developmental disability processes:

1. Developmental Delay. Individuals younger than five (5) years of age must meet the criteria.
2. **Developmental Disability.** Individuals five (5) years of age or older must meet the criteria:
  - a. Evidence of substantial disability prior to age 22
  - b. Evidence of neurological condition resulting in either intellectual or adaptive behavior limitations
  - c. Current I.Q. scores from a Psychological or Cognitive Testing such as Stanford-Binet or Wechsler
  - d. Current Adaptive Behavior Testing such as Vineland

x. To apply for services, locate your specific CCB and complete a Request for Determination of Developmental Disability. <https://colorado.gov/pacific/hcpf/community-centered-boards>

- vi. Rocky Mountain Human Services CCB covers the Denver Area.  
9900 E. Iliff Avenue  
Denver, CO 80231  
Main: 303.636.5600  
<https://www.rmhumanservices.org/>

- xi. Waiting Lists: There is a waiting list for DD Waiver Services, so it is imperative to quickly identify if your ward needs this service and to apply.

## b. Mental Health

According to the National Alliance on Mental Illness: Mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Just as diabetes is a disorder of the pancreas, mental illnesses are medical conditions that often result in a diminished capacity for coping with the ordinary demands of life. The good news about mental illness is that recovery is possible. Most people diagnosed with a serious mental illness can experience relief from their symptoms by actively participating in an individual treatment plan. In addition to medication treatment, psychosocial treatment, such as cognitive behavioral therapy, interpersonal therapy, peer support groups, and other community services can also be components of a treatment plan and that assist with recovery.

Sometimes guardianships are imposed because of a severe mental illness that impairs a person's ability to think and make decisions. Additionally, people under guardianship often have experienced significant changes in physical capacity, loss of sensory abilities, loss of independence, loss of status and income, and loss of family and friends that can affect their mental and emotional health.

### 1. Mental Health First Aid

- a. Aims to teach members of the public how to respond in a mental health emergency and offer support to someone who appears to be in emotional distress. See *Mental Health First Aid USA Manual (2015)*.
- b. Public Guardians complete training through Colorado Mental Health First Aid to acquire basic knowledge and skills to respond to an individual and/or client in distress. Mental Health First Aid Certificates of Completion are valid for three (3) years.
- c. Public Guardians are not in a medical first aid responder role. Should the situation escalate, Public Guardians follow the Critical Incident Policy 6.13.
- d. When administering Mental Health First Aid Public Guardians are the first line of support with the goals of helping the person feel less distressed and assisting the individual and/or client in seeking further assistance.

- e. Public Guardians will follow the **Mental Health First Aid Action Plan, ALGEE:**
1. Action A: Assess for risk of suicide or harm
  2. Action L: Listen nonjudgmentally
  3. Action G: Give reassurance and information
  4. Action E: Encourage appropriate professional help
  5. Action E: Encourage self-help and other support strategies
  - f. For more detailed information, See *Mental Health First Aid USA Manual (2015)*.

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V - VIII; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3, 5 – 14, and 24.

2. The Office of Behavioral Health (OBH) administers two state mental health hospitals, purchases services to prevent and treat mental health and substance abuse disorders through contracts with behavioral health providers, regulates the behavioral health system, and provides training, technical assistance, evaluation, data analysis, prevention services and administrative support to behavioral health providers and stakeholders. The OBH serves as the federally designated “Single State Authority” for mental health and substance abuse.

- a. Colorado’s Mental Health Care and Treatment System explained:

<https://www.colorado.gov/pacific/cdhs/behavioral-health>

- b. CDHS Forms related to Mental Health Care and Treatment System

<https://www.colorado.gov/pacific/cdhs/forms-20>

- Drug Application for Emergency Commitment
- Emergency Commitment Process for Alcohol
  - Application for Emergency Commitment of Intoxicated or Incapacitated Person
- Involuntary Commitment Application for Substance Abuse
- Transportation Hold Fact Sheet
  - Involuntary Transportation Hold (M-.05)
- Emergency Mental Illness Report and Application
- Rights of Patients

### 3. Rights of Patients

- a. **Your Treatment:** you will be examined to determine your mental condition. We believe that if you understand and participate in your evaluation, care, and treatment, you may achieve better results. The staff has a responsibility to give you the best care and treatment possible and available and to respect your rights.
- b. **No Discrimination:** You have the right to the same consideration and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, financial status or disability.
- c. **Your Lawyer:** You have the right to retain and consult with an attorney at any time. If you are here involuntarily, the court will appoint an attorney for you (at your own expense, if you are found able to afford one).
- d. **Telephones:** You have the right ready access to telephones, both to make and receive calls in privacy.
- e. **Letters:** You have the right to have access to letter writing materials, including postage. They will be provided if needed. If you are unable to write, members of the facility will assist you to write, prepare, or mail correspondence.
- f. **Visitors:** You have the right to frequent and convenient opportunities to meet with visitors. The facility may not deny visits at any time by your attorney, clergyman, or physician.
- g. **Refusal of Medications:** You have the right to refuse to take medications, unless you are an imminent danger to yourself or others or the court has ordered medications.
- h. **Certification:** If you are involuntary patient, you have the right to a review of your certification or treatment by a judge or jury, and you may ask the court to appoint an independent professional person (psychiatrist or psychologist) to examine you and to testify at your hearing.
- i. **Clothing and Possessions:** You have the right to wear your own clothes, keep and use your own possessions and keep and be allowed to spend a reasonable sum of your own money.
- j. **Signing in Voluntarily:** You have the right to sign in voluntarily, unless reasonable grounds exist to believe you will not remain a voluntary patient.
- k. **Least Restrictive Treatment:** You have the right to receive medical and psychiatric care and treatment in the least restrictive treatment setting possible, suited to meet your individual needs.
- l. **Transfers:** If you are certified, you have the right to 24-hour notice before being transferred to another facility unless an emergency exists. You have the right to protest to the court any such transfer, the right to notify whom you wish about the transfer, and the right to have the facility notify up to 2 persons designated by you about your transfer.
- m. **Confidentiality:** You have the right to confidentiality of your treatment records except as required by law.
- n. **Access to Medical Records:** You have the right to see your medical records at reasonable times.

- o. Fingerprints: You have the right not to be fingerprinted, unless it is required by law.
- p. Photographs: You have the right to refuse to be photographed except for hospital identification purposes.
- q. Voting: You have the right to the opportunity to register and vote by absentee ballot with staff assistance.
- r. Restrictions: If you abuse the rights regarding telephones, letters, writing materials, visitors or clothing and possessions, these rights may be restricted by the professional person (physician or licensed psychologist) providing treatment, but you must be given an explanation as to why the right is to be restricted. Restricted rights shall be evaluated for therapeutic effectiveness every 7 days.
- s. Grievances: Grievances or complaints may be submitted to the Colorado Department of Health, the Colorado Division of Behavioral Health, or the Disability Law Colorado. Your patient representative will help you select the proper agency for your complaint or grievance and assist you preparing the complaint or grievance if you wish.

4. Colorado's system of care and treatment for mental health is established by statute (Title 27, Article 65, commonly referred to as "27-65") and further defined in OBH rule (Volume 2 CCR 502-1). <https://www.colorado.gov/pacific/cdhs/Involuntary-Mental-Health-Treatment-System>

- a. The following **Mental Health Centers** are designed by the Office of Behavioral Health to provide care and treatment to persons with mental health disorders.
  - o AllHealth Network
  - o AllHealth Bridge House
  - o AllHealth Santa Fe House
  - o AspenPointe Behavioral Health Services
  - o AspenPointe Lighthouse
  - o Aurora Mental Health Center
  - o Axis Health System
  - o Axis Health System ATU
  - o Fitzsimons CSU
  - o Boulder Community Hospital
  - o Cedar Springs Behavioral Health System
  - o Centennial Mental Health Center, Inc.
  - o Centennial Peaks Hospital
  - o Children's Hospital Colorado
  - o Clear View Behavioral Health
  - o Colorado Mental Health Institute - Ft. Logan
  - o Colorado Mental Health Institute - Pueblo
  - o Community Reach Center

- Community Reach Center CSU
- Denver Health Medical Center
- Denver Springs Hospital
- Devereux Advanced Behavioral Health
- Eating Recovery Center
- Health Solutions
- Health Solutions ATU
- Highlands Behavioral Health System
- Jefferson Center for Mental Health
- Jefferson Hills Lakewood
- Jefferson Hills CSU
- Lutheran Medical Center Senior Behavioral Health Unit
- Mental Health Center of Denver
- Mental Health Partners
- Mind Springs Health
- University of Colorado Mountain Crest
- North Range Behavioral Health
- North Range Behavioral Health ATU
- Parkview Medical Center
- Peak View Behavioral Health
- Porter Adventist Hospital
- San Luis Valley Behavioral Health Group
- Solvista Health
- Southeast Mental Health Services
- Summitstone Health Partners
- Summitstone Health Partners CSU
- The Center for Mental Health
- The Medical Center of Aurora Behavioral Health Services
- Transitions at West Springs
- Veterans Affairs Medical Center Denver
- Veterans Affairs Medical Center Grand Junction
- West Pines Behavioral Health
- West Springs Hospital

1. OBH, Community Behavioral Health division oversees and purchases substance abuse and mental health preventions, treatment and recovery services across the state of Colorado. Community Behavioral Health supports and ensures quality effective behavioral health programming in community settings and in partnership with consumers, families and stakeholders: <https://www.colorado.gov/pacific/cdhs/community-programs-behavioral-health>

**Mental Health Center of Denver** is a Community Mental Health Center that serves Denver County:



4141 E. Dickerson Place  
Denver, Colorado 80222  
P: 303.504.6649

2. Managed Service Organizations or Administrative Services Organizations (ASO). The OBH contracts with ASOs to provide a network of walk-in crisis centers, crisis stabilization centers and respite and mobile crisis services in their region.

**Signal Behavioral Health Network (Region 5)** covers Denver County  
6130 Greenwood Plaza Blvd., Suite 150  
Greenwood Village, Colorado 80111  
P: 303.639.9320

3. **Colorado Crisis Services** is available for professional, confidential, 24/7 support: 1-844-493-8255 or Text "TALK" to 38255
  - a. If a Public Guardian client is having a crisis situation (suicidal, danger to self or others), call "9-1-1" and then call the Colorado Crisis Services.
  - b. If a Public Guardian client needs a therapist or needs to talk with someone and is not in crisis, call Colorado Crisis Services with your client. If a Public Guardian is unable to call with your client, it is appropriate to refer your client to Colorado Crisis Services.

#### 4. **OBH Community Specialty Clinics**

- Asian Pacific Center for Human Development, Denver Outpatient Services: Immigration & Refugee Asian Pacific Islander Community 1537 Alton St., Aurora, CO 80010 Phone: 303-393-0304 Fax: 303-388-1172 Website: [www.apdc.org](http://www.apdc.org)
- CHARG Resource Center, Denver Outpatient Services: Adults and Older Adults Living with Chronic Mental Illness 709 E. 12th Ave., Denver, CO 80203 Phone: 303-830-8805 Fax: 303-830-8918 Website: [www.charg.org](http://www.charg.org)
- Developmental Disability Consultants, Denver Outpatient Services: All ages, Developmental Disabilities, Acquired Brain Injury 1211 So. Parker Rd., Denver, CO 80231 Phone: 303-337-2210 Fax: 303-337-4147 Website: [www.ddconsultants.org](http://www.ddconsultants.org)

- Healthier You, Fort Morgan Intensive Outpatient Services: 55+ older Adults Colorado Plains Medical Center 1000 Lincoln Street Fort Morgan, CO 80701 Phone: 970-542-3323 Fax: 970-542-3377
  - Professional Psychology Center (P.P.C.), Denver Outpatient Services: all ages, General Counseling 2460 S. Vine, Denver, CO 80210 Phone: 303-871-3626 Fax: 303-871-3625 Website: [www.du.edu/gspp/professional-psychology-center](http://www.du.edu/gspp/professional-psychology-center)
  - Servicios de la Raza, Denver Outpatient Services: 6+ years of age, Low and No Income 4055 Tejon St., Denver, CO 80211 Phone: 303-458-5851 Fax: 303-455-1332 Website: [www.serviciosdelaraza.org](http://www.serviciosdelaraza.org)
- Updated June 27, 2014
- Synergy Outpatient, Denver Outpatient Services: 12 years old +, Adolescent and Family Co-Occurring Counseling 1212 South Broadway, Suite 200, Denver, CO 80210 Phone: 303-934-1008 Fax: 303-934-1262
  - The Empowerment Program, Inc, Denver Outpatient Services: Adult Women with Cross-Dimensional Risk 1600 York Street, Denver, CO 80206 Phone: 303-320-1989 Fax: 303-320-3987 Website: [www.empowermentprogram.org](http://www.empowermentprogram.org)
  - Wellness Treatment Center (Community Care, Corp.), Englewood Outpatient Services: Adult, General Counseling 800 Englewood Parkway, Ste. B202, Englewood, CO 80110 Phone: 303-777-0303 Fax: 303-733-4565 Website: [www.communitycarecorporation.com](http://www.communitycarecorporation.com)

5. Mental Health Resources for caregivers: <https://cowellnessrecovery.org/resources-for-caregivers/>

6. OBH operates two mental health institutes, or state-run psychiatric hospitals: Colorado Mental Health Institute Pueblo (CMHIP) and Colorado Mental Health Institute Fort Logan (CMHIFL).

- a. **Colorado Mental Health Institute Pueblo (CMHIP).** CMHIP is a 455-bed hospital that provides inpatient behavioral health treatment services to adult patients, adolescents and geriatric patients. CMHIFL is a state-run forensic hospital that serves individuals with pending criminal charges who require evaluations of competency, individuals who have

been found by a court to be incompetent to proceed (restoration treatment), and individuals found to be not guilty by reason of insanity.

b. **Colorado Mental Health Institute Pueblo (CMHIP)**

1600 W. 24<sup>th</sup> Street  
Pueblo, CO 81003  
Main Phone: 719.546.4000  
Admissions: 719.546.4406  
Medical Records: 719.546.4184  
Patient's Right Advocate: 719.546.4034

- c. **Colorado Mental Health Institute Fort Logan (CMHIFL)**. CMHIFL is a 94-bed hospital that provides inpatient behavioral health treatment services to adult patients. CMHIFL is a state-run psychiatric facility for individuals with mental illness. Admission is through a mental health emergency/involuntary process.

**Colorado Mental Health Institute Fort Logan (CMHIFL)**

3520 W. Oxford Avenue  
Denver, CO 80236  
Main Phone: 303.866.7040  
Medical Records: 303.866.7040  
Fax: 303.866.7048  
Patient's Right Advocate: 303.866.7079

7. CMHIP and CMHIFL are accredited by The Joint Commission. To report a concern about compliance standards at both locations contact the Joint Commission <https://www.jointcommission.org/resources/patient-safety-topics/report-a-patient-safety-event/>

**To Report a concern:**

- a. Online: Submit a new patient safety event or concern
- b. Online: Submit an update to your incident (You must have your incident number)
- c. Fax: 630-792-5636
- d. Mail: Office of Quality and Patient Safety  
The Joint Commission  
One Renaissance Boulevard  
Oakbrook Terrace, Illinois 60181

Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

## 5. INVOLUNTARY MENTAL HEALTH TREATMENT SYSTEM

### a. Laws, Rules and Guidance on Mental Health Care and Treatment in Colorado

- 27-65 Statutes: <https://www.colorado.gov/pacific/cdhs/Involuntary-Mental-Health-Treatment-System>
- 27-65 Rules: <https://www.colorado.gov/pacific/cdhs/Involuntary-Mental-Health-Treatment-System>
- 27-65 Procedure Manual: <https://www.colorado.gov/pacific/cdhs/Involuntary-Mental-Health-Treatment-System>
- <https://drive.google.com/drive/folders/0B32vshZrERKsamhiTVILTy1ET3M>
- See Mental Health Emergency and Involuntary Hold Forms [https://drive.google.com/file/d/1D8lp\\_sagbmVDd1rw\\_dOanMguLwiVJoa/view](https://drive.google.com/file/d/1D8lp_sagbmVDd1rw_dOanMguLwiVJoa/view)

### b. 72-Hour Evaluation & Treatment: Cannot keep an involuntary patient longer than 72 hours, excluding weekends and holidays, depending on the facility's license. **See CDHS/DBH Overview of 27-65 C.R.S. PowerPoint**

- i. "Any person who appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to self or others" **AND/OR**
- ii. "Any person who appears to have a mental illness and as a result of mental illness appears to be gravely disabled"
- iii. A facility does not have to accept a 72-hour hold **unless ordered by a court**. Emergency Department physicians may complete an evaluation and release the individual
  - The Public Guardian will contact the Emergency Department/facility directly to inform them that the individual is under a public guardianship and they are not to release or discharge without public guardian consent
  - If the individual is released without public guardian consent and is at risk, the Public Guardian should contact APS and Law Enforcement immediately to file a report

- If the individual is released without public guardian consent, the Public Guardian will discuss filing complaints against the professional and/or department with the Director
- iv. Those who can place a 72-hour hold:
1. LCSWs, LPCs, LMFTs, peace officers, professional persons RNs and LACs with additional knowledge, judgement & skill in mental health (C.R.S. § 29-65-105)
  2. “Professional Person:” may determine the conclusion of a 72-hour mental health evaluation and certify for treatment
  3. A person licensed to practice medicine or a psychologist licensed to practice in Colorado
- v. Actions following a 72-hour hold evaluation:
- Person is certified for treatment OR
  - Person signs in for voluntary treatment [Public Guardian must consent for voluntary treatment if client consents and after discussion with Director] OR
  - Person is released after evaluation by the professional person
- i. **Short-Term Treatment:**
- i. Either inpatient or outpatient
  - ii. Cannot keep an involuntary patient for longer than 180 days (excluding short-term certification)
- ii. **Long-Term Treatment:**
- i. Either inpatient or outpatient
  - ii. Must be designated as Long-term treatment facility
- c. **Patient Rights**
- i. Patients Rights must be posted at the facility and a copy must be given to the patient
  - ii. Some rights may be denied for good cause by the professional person providing treatment. Only the following rights may be restricted.
  - iii. The reason for denial must be documented in the clinical record & evaluated on an ongoing basis & restrictions must be ordered & documented every 7 calendar days by the professional person
    - i. Receive and send sealed correspondence
    - ii. Access to letter writing materials
    - iii. Access to telephone

- iv. To have visitors (except their attorney, religious representative or physician). A guardian cannot be denied access to their ward
- iv. Secure treatment facilities have specific rules for rights restrictions (Rule 19.1312)

d. **Patient Advocacy**

- i. Facilities must have a designated patient representative
  - ii. Individuals must be given the name and phone number of the designated patient representative
  - iii. Facilities must post the name, location, phone number and responsibilities of the designated patient representative and include where to get a copy of the Complaint Process
1. Complaints related to 27-65 Statutes & Rules are investigated by CHDS/Division of Behavioral Health.
    - i. By email: [cdhs\\_obhfeedback@state.co.us](mailto:cdhs_obhfeedback@state.co.us)
    - ii. Phone: 303.551.4190
  2. Ombudsman for Behavioral Health Access to Care
    - i. By email: [CDHS\\_Ombudsman\\_BH@state.co.us](mailto:CDHS_Ombudsman_BH@state.co.us)
    - ii. Phone: 303.866.2789

e. **Involuntary Transportation Hold**

[https://drive.google.com/file/d/1Hg84SpcACRkIX7XH5WXFe8XkeysDYPm\\_h/view](https://drive.google.com/file/d/1Hg84SpcACRkIX7XH5WXFe8XkeysDYPm_h/view)

- i. Pursuant to C.R.S. 27-65-105 (1)(a)(I.5), the Involuntary Transportation Hold is an initial intervening step to get an individual in a mental health crisis, who will not go voluntarily and does not clearly meet 72-Hour Hold criteria from the community to a facility with crisis walk-in services that will then screen for the need for a 72-Hour Hold.
- ii. Least restrictive alternatives (voluntary) should be used first
- iii. An **Intervening Professional**, statutorily defined in C.R.S. 27-65-105 (1)(a)(III), can place a Transportation Hold:
  - i. A certified peace officer
  - ii. A professional person
  - iii. LCSW
  - iv. Registered Nurse\*
  - v. LPC\*
  - vi. LMFT\*

- vii. LAC\*
- viii. \*with post-graduate education and additional preparation
  
- iv. An individual can be transported 24/7 to a Crisis Walk-In Center  
<https://coloradocrisisservices.org/>
  - i. Denver Walk-In Crisis Services  
4353 E. Colfax Avenue  
Denver, CO 80220
- v. An individual may be transported to a hospital with mental health services.
- vi. Once at the facility, facility staff receives gathers collateral information from the transporter
- vii. The Intervening Professional **immediately screens** the individual to determine if they meet criteria (harm to self or others, or gravely disabled) for 72-hour treatment and evaluation. See definitions of “Gravely Disabled” in ***The new Title 27 Article 65*** Handout
  
- viii. Outcome of screening:
  - i. Individual agrees to receive mental health services voluntarily (Public Guardian has to consent and client needs to consent)
  - ii. If individual refuses voluntarily services and criteria met, 72-Hour Hold is placed; or
  - iii. If individual refuses voluntarily services and does not criteria, individual is free to leave the facility (Public Guardian has to consent and client needs to consent)
    - The Public Guardian will contact the Emergency Department/facility directly to inform them that the individual is under a public guardianship and they are not to release or discharge without public guardian consent
    - If the individual is released without public guardian consent and is at risk, the Public Guardian should contact APS and Law Enforcement immediately to file a report
    - If the individual is released without public guardian consent, the Public Guardian will discuss filing complaints against the professional and/or department with the Director

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## **c Dementia**

- i. According to the National Institute of Health, dementia is a word for a group of symptoms caused by disorders that affect the brain. It is not a specific disease, but a syndrome characterized by decline in memory along with decline in other cognitive abilities. People with dementia may not be able to think well enough to do normal activities, such as getting dressed or eating. They may lose their ability to solve problems or control their emotions. Their personalities may change. They may become agitated or see things that are not there. People with dementia have serious problems with two or more brain functions, such as memory and language. Many different diseases can cause dementia, including Alzheimer's disease and stroke. Drugs are available to treat some of these diseases. While these drugs cannot cure dementia or repair brain damage, they may improve symptoms or slow down the disease

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## **d Alzheimer's Disease**

- i. Alzheimer's disease, a specific type of dementia and accounts for 50 percent to 80 percent of dementia cases. Alzheimer's disease is not a normal part of aging, although the majority of people with Alzheimer's are age 65 and older. About five percent of people with the disease have "early onset" Alzheimer's, which can appear in the 40s and 50s. According to the Alzheimer's Association, Alzheimer's is a disease in which symptoms gradually worsen over a number of years. In the early stages of the disease, memory loss is mild, but in late-stage Alzheimer's, people lose the ability to carry on a conversation and respond to their environment.
- ii. Alzheimer's disease is an illness that ends in death, but most often people die from other causes first, such as stroke or heart attack. The most common death for individuals is infections, especially pneumonia and sepsis. Sepsis can be from urinary tract infection or bowel back up from inability to communicate symptoms to care givers.
- iii. Factors that are observable to other people regarding an individual with Alzheimer's disease is changes in behavior- lost interest in hobbies, change in sleeping, alcohol use, lack of dependability, personality changes, less effective at something the individual was previously good at, disheveled, habits of a lifetime that begin to



disappear- all can signal cognitive decline earlier than an actual diagnosis of dementia. Also, cognitive decline may be mistakenly identified as character flaw rather than disease progression.

- iv. People with Alzheimer’s disease or other dementias may be difficult to interview. In earlier stages, long-term memory often remains intact while short-term memory dwindles. Discussion may be confusing, since individuals may lose track of the conversation or forget where they are. They may experience paranoia or become agitated during conversation. However, at other times, they may appear coherent, so an extended conversation may be necessary to reveal limitations. In the late stages, people with Alzheimer’s disease may be unable to converse at all.
- v. Ten Absolute communication tool - Jo Huey, *Alzheimer’s Disease, Help and Hope: Ten Simple Solutions for Caregivers*.
  1. Never argue; instead agree.
  2. Never reason, instead, divert.
  3. Never embarrass, instead distract.
  4. Never lecture, instead reassure.
  5. Never “Remember” instead, reminisce.
  6. Never “I told you”; instead, repeat/regroup.
  7. Never say, “You can’t”, do what they can.
  8. Never command/demand; instead, ask/model.
  9. Never condescend; instead encourage/praise.
  10. Never force; instead, reinforce.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

e. **Traumatic Brain Injury; Strokes**

- i. Every year, millions of people in the United States sustain head and brain injuries—for example, changes that affect thinking, sensation, language, and emotions. People with moderate to severe injuries need rehabilitation, which may include physical therapy, occupational therapy, speech/language therapy, psychiatry, and social support. Sometimes people with brain injuries need g/cs; sometimes people recover enough to be restored to capacity.
- ii. A stroke is a medical emergency that occurs when blood stops flowing to the brain. There are two kinds of stroke. The more common kind, called ischemic stroke, is caused by a blood clot that blocks or plugs a blood vessel in the brain. The other kind, called

hemorrhagic stroke, is caused by a blood vessel that breaks and bleeds into the brain. “Mini-strokes” or transient ischemic attacks (TIAs) occur when the blood supply to the brain is briefly interrupted. The affected area of the brain is unable to function, leading to limitations on movement, understanding, speech or vision.

- iii. Stroke patients undergo treatment to help them return to normal life as much as possible by regaining and relearning the skills of everyday living—especially physical and occupational therapy. Stroke patients who experience mental confusion may need a guardian, but capacity may be restored upon successful rehabilitation.

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**f. Alcoholism and Substance Abuse**

- i. Chronic use of alcohol or drugs can compromise a person’s ability to make decisions. In extreme cases, alcohol and drug abuse can lead to dementia, brain damage, mental illness, and death. Rehabilitation may help the person to overcome mental or physical impairments and regain independence. Unfortunately, sometimes the problem is cyclical—with treatment, the person regains independence, and then reverts to a period of alcohol or drug abuse.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

**ii. ALCOHOL & DRUG EMERGENCY COMMITMENT/ ALCOHOL & DRUG INVOLUNTARY COMMITMENT**

Alcohol and Drug Emergency Commitment/Alcohol and Drug Involuntary Commitment information:

<https://www.colorado.gov/pacific/cdhs/alcohol-drug-emergency-commitmentalcohol-drug-involuntary-commitment>

iii. **ALCOHOL & DRUG EMERGENCY COMMITMENT**

1. **Alcohol/Drug Emergency Commitment.** An individual can be placed and detained in a licensed detoxification program without their consent for up to 5 days upon an application approved by the detoxification program’s administrator or designee. Individual must be either:
  2. Intoxicated, or under the influence or
  3. Clearly dangerous to self and/or others or is incapacitated and clearly dangerous to self and/or others
  4. This is not a “5-day hold” since the program has the discretion to discharge the individual from the emergency commitment and the detox program with a referral to voluntary treatment, if appropriate, sooner than 5 days. Discharge should not occur without guardian consent
  5. To start the process, call the IC message line at 303.866.7502 during normal business hours or complete the Emergency Commitment Form  
[https://drive.google.com/file/d/0B\\_Qu7DIYJwx7MDNyeFdvTIN1YU0/view](https://drive.google.com/file/d/0B_Qu7DIYJwx7MDNyeFdvTIN1YU0/view)
  6. To locate a mental health/substance abuse provider:  
<https://www.colorado.gov/ladders>

iv. **ALCOHOL & DRUG INVOLUNTARY COMMITMENT**

1. An individual may be committed to Alcohol/Drug treatment if a Judge orders it through either an **Involuntary Commitment process.**
2. **Involuntary Commitment** should be reserved for individuals who meet the following:
  - a. Refusing all forms of voluntary treatment
  - b. Is psychiatrically stable
  - c. Is an imminent risk to themselves or other as a direct result of their substance abuse
  - d. Is medically stable enough to be placed on an emergency commitment through a licensed detoxification center
  - e. When sober, the individual is likely to benefit from substance abuse treatment
3. To start the process, call the IC message line at 303.866.7502 during normal business hours or complete the Involuntary Commitment Application  
[https://drive.google.com/file/d/1mOqWfOn95uudRnmu54\\_jv\\_zAojPGH3jH/view](https://drive.google.com/file/d/1mOqWfOn95uudRnmu54_jv_zAojPGH3jH/view)
4. To locate a mental health/substance abuse provider:  
<https://www.colorado.gov/ladders>

g. **Veterans**

- i. The Veterans Administration sponsors a number of programs to benefit veterans, such as a health care system and financial benefits:

<https://www.va.gov/directory/guide/state.asp?STATE=CO>

ii. **Veterans Health Administration**

- VA Health Care System
- VA Medical Center
- Outpatient Clinic
- Community Based Outpatient Clinic
- Vet Centers
- VA Rocky Mountain Network <https://www.visn19.va.gov/>
- Cheyenne VA Medical Center <https://www.cheyenne.va.gov/>
- VA Western Colorado Health Care System Grand Junction  
<https://www.grandjunction.va.gov/>

iii. **Veterans Benefits Administration**

iv. **National Cemetery Administration**

v. **Veterans Affairs Offices**

- vi. The VA provides care to Veterans through community providers when the VA cannot provide the care needed. **Community Care** is based on specific eligibility requirements, availability of VA care, and the needs and circumstances of the individual veteran. Visit the site for eligibility:

<https://www.va.gov/communitycare/>

- iv. **Veterans Crisis Line:** 24/7 serves all veterans and family members. This is the US Department of Veterans Affairs National Suicide Prevention Hotline

1. 1.800.273.8255, press 1
2. Text 838255
3. Support for deaf & heard of hearing 1.800.799.4889

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

#### h. **Reversible or Temporary Conditions**

Many conditions are temporary or reversible and should not be the basis for a permanent g/c order. However, individuals who have experienced temporary conditions sometimes find themselves under guardian and you may need to alert the court that restoration of capacity should be considered. Here are some examples of conditions that cause confusion and diminished capacity, but that often are temporary and reversible:

1. delirium;
2. medication effects;
3. urinary tract infection;
4. transfer trauma (stress caused by relocating to another environment);
5. depression, stress, grief.

See Handouts:

- ***Temporary and Reversible Causes of Confusion***
- ***Medical Conditions Affecting Capacity***

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

### **POLICY 6.8.5.a. SUCCESSFUL COMMUNICATION WITH CLIENTS**

Adapted from trainings with Rocky Mountain Human Services, Lifelong, Inc. and Colorado Cross-Disability Coalition, and Philosophical Inclusive Design: Intellectual Disability and the Limits of Individual Autonomy in Moral and Political Theory, Laura Davy, Hypatia vol. 30, no. 1 (Winter 2015).

1. The Colorado OPG serves indigent and incapacitated adults. It is important to understand the client's incapacity, needs, and preferences. This will help guide successful communication with clients. First and foremost communicating with clients must be person-centered.
2. General concepts to consider when communicating and interacting with clients:
  - Remember that each individual is unique so be sure to get to know them and their preferences
  - Use Active Listening skills

- Consider an individual’s culture (experiences, disability culture, history, “norms & customs”)
- The client has likely experienced Ableism. Ableism is oppression or discrimination based on physical, intellectual, cognitive, psychiatric, sensory or other ability. This can shape an individual’s experience
- Use People First Language
- Don’t make assumptions about ability if an individual has speech difficulties
- Time and sequencing of events can be a difficult concept, so reference activities, i.e. breakfast
- An individual may be very concrete in their communication and thinking
  
- Consider Multi-Modal Communication & Learning skills and tools such as kinesthetic, verbal, visual, audio, touch
- Speak to and engage to the individual, not the parent or advocate
- Don’t assume an individual cannot understand if they do not communicate
- Don’t infantilize your speech, your client is an adult
- Remember Dignity in Risk: refers to the concept of affording a person the right (or **dignity**) to take reasonable **risks**, and that the impeding of this right can suffocate personal growth, self-esteem and the overall quality of life (Marsh & Kelly, 2018; Ibrahim & Davis, 2013).
- Communicate and act in a person-directed method

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

### **POLICY 6.8.5.b. VERBAL DE-ESCALATION TECHNIQUES**

Adapted from trainings with Rocky Mountain Human Services, Lifelong, Inc. and Colorado Cross-Disability Coalition, Mental Health First Aid of Colorado, and Crisis Intervention and De-Escalation Techniques.

1. The Colorado OPG serves indigent and incapacitated adults. It is important to understand the client’s incapacity, needs, and preferences. This will help guide successful interactions and communications with clients.
2. In cases where a client may be under stress or experiencing a crisis (becoming agitated, upset, making threats, etc.), refer to specific Mental Health First Aid training and handbook and Guidelines for De-escalation.
3. General concepts to consider when attempting to de-escalate an interaction with a client:
  - Refer to Policy 6.8.5.a. Successful Communication with Clients

- First and foremost, remain calm and ensure the client and you are safe
- The client may feel a powerless and not in control. These concepts should help give the client a sense of control
- Be active in helping, exploring and resolving the issue(s)
- Focus only on support and goals addressing the crisis
- Build hope and expectations leading to acceptable resolutions
- You may have to allow the conflict for the time being
- Remember that predictability provides security and safety. Tailoring your client's goals, meetings, etc. in a predictable manner may alleviate a client's stress

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – III, V, VI, and VIII; Standards National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1, 3 - 16, 23, and 24.

### **Policy 6.9. Fiduciary Principles**

- i. All guardians are placed in a fiduciary relationship with the ward. This means that all guardians have a special obligation of trust and confidence, and the duty to act primarily in their client's benefit. All guardians are subject to high standards of care and guardianship practice in conducting their responsibilities. Guardians with a higher level of relevant skills are held to those use of those skills.
- ii. The National Guardianship Association outlines the following fiduciary principles applicable to guardians:
  - 1. Guardians owe undivided loyalty to the person under guardianship
  - 2. Guardians must not cause a breach of trust
  - 3. Guardians cannot delegate their authority to act to another individual or agency
  - 4. Guardians have an obligation to keep the person's assets safe
  - 5. Guardians have a duty to act on claims
  - 6. Guardians have a duty to defend claims
  - 7. Guardians must not commingle assets
  - 8. Guardians must avoid conflicts of interest
  - 9. Guardians should be independent from all service providers
- iii. With the proper authority, the initial steps after appointment as guardian are as follows:
  - 1. 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 Public Guardian shall ascertain the income, assets, and liabilities of the person.
  2. The Public Guardian shall ascertain the goals, needs, and preferences of the person.
  3. The g/c shall coordinate and consult with others close to the person.
2. The Public Guardian shall meet with the ward as soon after the appointment as feasible. At the first meeting, the Public Guardian shall use the Social History Survey and:
    1. Communicate to the person the role of the Public Guardian;
    2. Outline the rights retained by the person and the grievance procedures available;
    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
  3. The Public 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 Public Guardian was appointed and must be independently verified.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – VI; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 5, 13 – 13, 16 – 20, 23, and 24.

a. **Policy 6.9.1. Public Benefits**

1. The Public Guardian shall develop and maintain a working knowledge of the services, benefits, providers, and facilities available in the community. The Public 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. The Public Guardian shall obtain all public and insurance benefits for which the person is eligible.
2. The Public Guardian must seek to obtain all available income for the ward and will cooperate with the ward’s conservator/Representative Payee/Fiduciary. If the ward’s own funds are inadequate to provide for the needs of the ward, the Public Guardian will find it both prudent and necessary to seek income supplementation via various income maintenance and insurance programs available through federal, state, and local resources. Public benefits may not



only be helpful, but essential to the Public Guardian in providing for the needs of the ward. The Public Guardian is, therefore, under a positive obligation to investigate their availability and seek such assistance on behalf of the ward. The Public Guardian will cooperate with the ward's conservator/Representative Payee/Fiduciary to oversee the disposition of the person's assets to qualify the person for any public benefits program.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services I – VI; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 5, 13 – 13, 16 – 20, 23, and 24.

b. **Policy 6.9.2. Medicare**

1. Medicare is the federal medical insurance plan for individuals who are blind or disabled and senior citizens - those over 65 - who need acute medical care. "Acute medical care" means an individual has been diagnosed with an illness or other medical issues where there is a high probability that the individual can recover and return to a normal life. Medicare provides payment for inpatient care in the hospital or skilled nursing facilities following a hospital stay (three midnights). Generally Medicare covers individuals who can get well, with exceptions for Lou Gehrig's disease. Individuals can qualify for 100 days of skilled nursing facility care as long as the patient continues to recover. There are four parts of Medicare coverage: hospital insurance, medical insurance, Medicare advantage plans and Medicare prescription drug plans.
2. Hospital Insurance (Part A)- U.S citizens or permanent residents are eligible:
  - i. If eligible to receive Social Security benefits, railroad retirement benefits, spouse eligible, spouse worked in government's job where Medicare taxes were paid or dependent parent of a fully insured deceased child.
  - ii. Ineligible individuals may also be eligible after 65 at certain enrollment periods for monthly premium
  - iii. Before 65 if disabled for 24 months, or disability pension from railroad retirement, Lou Gehrig's disease, permanent kidney failure and receive maintenance dialysis or a kidney transplant.
  - iv. Benefits- inpatient hospital, eligible skilled nursing, medically necessary home health care services, hospice once certified as terminally ill with six

months or less to live. Has a deductible, co-pay after 60 days, increasing after 90-up to 60 days over lifetime. Mental health care is psychiatric hospital is limited to 190 in a lifetime.

3. Medical Insurance (Part B)

Anyone eligible for free Medicare hospital insurance can enroll in Medicare Part B by paying monthly premium. Also an individual who is not eligible for free hospital insurance can buy medical insurance without having to buy hospital insurance if 65 or older and U.S. citizen or lawfully admitted noncitizen who has lived in the US for five years.

i. Benefits- Part B helps pay for doctor, medical, supplies not covered by hospital insurance. Deductible and copay required.

4. Medicare Advantage (Part C) Part A and Part B recipients can join a Medicare Advantage plan to cover additional services.

5. Medicare Prescription Drug Plans (Part D) Part A and Part B , or Part C is eligible for prescription drug coverage. Requires monthly premium; helps pay for medications prescribed for treatment. Individuals covered by Medicaid in nursing home must have Part D to have prescription medication covered in nursing home.

6. Medigap Policies- Medicare supplement insurance fills the gaps between Medicare benefits and out-of-pockets costs. Medigap policies are sold by private insurance companies and pay for only services that Medicare deems as medically necessary and based on Medicare-approved charge.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 13, 17 – 20, 23, and 24.

c. **Policy 6.9.3. Medicaid**

1. **Difference between Medicare and Medicaid.** Confusion over the two programs is common. Both are basically government health plans. Medicare is administered by the federal government and funded through congressional appropriation, a federal payroll tax, and recipient premiums. Individuals must be 65 or older to qualify for Medicare. Medicaid, on the other hand, is a federal-state partnership providing health care to the poor and long-term care for disabled individuals and the elderly. The costs are shared, with the federal

portion based on a formula that compares per capita state income with the national average. Generally, lower income states have a higher portion of their Medicaid costs paid by the federal government. But, in no case, does a state pay more than 50 percent of Medicaid costs.

2. Medicaid in Colorado is known as Health First Colorado. Health First Colorado is public health insurance for Coloradans who qualify. Medicaid is funded jointly by the federal government and Colorado state government, and is administered by the Department of Health Care Policy & Financing.
3. Every member of Health First Colorado has a primary care provider and belongs to a regional organization that helps connect you with health care.
4. If a Public Guardian needs to apply for Medicaid for a client, please refer to the ***Medicaid Criteria Handout***
5. Organizations that assist with applying for Medicaid:
  - Catholic Charities
  - Inner City Health
  - Rocky Mountain Humans Services
  - Benefits in Action
  - Denver Public Library referral services
6. For various ways to apply:  
<https://www.healthfirstcolorado.com/apply-now/>
  - In-person applications in Denver County:
    - 1200 Federal Blvd.  
Denver, Colorado 80204
    - 3815 Steele Street  
Denver, Colorado 80205
    - 4685 Peoria Street  
Denver, Colorado 80239
  - Online application: <https://coloradopeak.secure.force.com/CPLOG>
  - Colorado Access serves Denver County: <https://www.coaccess.com/>

Providing Guardianship Services; Standards National Guardianship Association  
Ethical Principles; National Guardianship Association Standards of Practice 1 - 13,  
17 – 20, 23, and 24.

d. **Policy 6.9.4. Social Security Administration**

1. The Social Security Administration (SSA) is an independent Federal government agency that administers two major benefit programs. The largest of these programs is the Retirement, Survivors and Disability Insurance (RSDI) program. This program is often referred to as **Social Security**. The other is the **Supplemental Security Income (SSI)** program.
2. **Social Security** is a social insurance program that protects workers and their families from a loss of earnings because of retirement, death, or disability. Social Security benefits are based on the earnings of a worker who has paid into the system by paying Federal Insurance Contributions Act (FICA) tax for a specified period of time. A worker, or his or her family, can receive Social Security benefits upon the worker's attainment of a certain retirement age, disability, or death. The amount a beneficiary receives depends on the age at which the worker retires, becomes disabled, or dies and how long he or she worked.
3. **SSI** is a Federal income maintenance program for aged, blind, and disabled persons with little or no income or resources. Funding for SSI does not come from Social Security contributions. Rather, the United States Treasury's general funds provide financing for this program. Some states supplement the maximum SSI Federal payment.
  - a) Because SSI is a needs-based program, the amount of resources or income an individual has may affect their eligibility to payments. To receive SSI payments, a person must be age 65 or older, blind or disabled and must have limited income and resources.
4. Some individuals may receive both Social Security and SSI benefits. eligibility depends on the individual meeting the requirements for each program.
5. The Social Security Administration's (SSA) Representative Payment Program provides assistance to the most vulnerable members of society who are unable to manage their Social Security or Supplemental Security Income (SSI) benefits. SSA pays these people through representative payees who receive and manage payments on behalf of beneficiaries. For a small segment of the population, traditional networks of support are not available, and SSA looks to state, local or community sources to fill the need. These sources are called organizational representative payees.

6. The Colorado OPG will not be SSA Representative Payee for our clients, but Public Guardians will likely need to work in coordination with Representative Payees.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 13, 17 – 20, 23, and 24.

a. **Policy 6.9.5. Veterans Administration**

1. There are many types of benefits available to veterans through the VA for education, life insurance, health care, home loans, burial benefits, compensation and pension.
  - a. A pension is a benefit for veterans or their surviving spouses with low incomes who are permanently and totally disabled when that disability is not related to military service, called a “special monthly pension”. Veterans are considered to have a permanent and total disability if they are: patients in a nursing home for long term care because of disability; receiving Social Security disability benefits; unemployable as a result of a disability or suffering from disease/disorder determent by the VA to be a permanent or total disability. The amount of the special monthly pension increases if the veteran with permanent disabilities is also housebound. People are considered housebound if they have a permanent and total disability and either have an additional disability, or disabilities, ratable at 60 percent or more or are confined to their premises.
  - b. To be eligible for a non-serve-connected pension the veteran must meet income and net worth requirements. Income is counted minus unreimbursed medical expenses. In addition to low income the veteran must have a limited net worth.
  - c. Under Dependency and Indemnity Compensation (DIC) unmarried spouse, dependent children and parents of veterans can qualify for benefits. Parents who are dependent on a veteran may qualify for financial support benefits based on need. A surviving spouse and dependent child may also qualify for DIC benefits if meeting eligibility guidelines.
  - d. A guardian of a veteran, parents of a veteran, spouse or un-remarried spouse of a veteran, adult child of a veteran (if determined to be “helpless”) should

review eligibility guidelines to determine if such an individual is eligible for benefits.

- e. The Colorado OPG will not be a VA Fiduciary for our clients, but Public Guardians will likely need to work in coordination with VA Fiduciaries.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 13, 17 – 20, 23, and 24.

b. **Policy 6.9.6. Accounting and Reporting Requirements**

1. While a Public Guardian will not be responsible for managing client funds, Public Guardians will attempt to monitor the conservator/Representative Payee/Fiduciary responsible for the client's funds by requesting monthly budgets, account statements/ledgers, and reconciliations.
2. If the Public Guardian suspects misuse of the ward's funds, he/she will document the concern in the CMS and notify the Director to determine the appropriate agency to report, including to the Probate Court.

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 13, 17 – 20, 23, and 24.

c. **POLICY 6.9.7. PREVENTING FINANCIAL FRAUD**

**To Report Investment Scams: SEC Denver Regional Office**

**303.844.1000**

**[denver@sec.gov](mailto:denver@sec.gov)**

**[www.sec.gov](http://www.sec.gov)**

**To Report a scam or financial fraud, contact AARP Foundation Elder Watch, in Partnership with the Colorado Attorney General:**

## 800.222.4444

- a. Sign up for **Fraud Colorado Fraud Alerts** <https://stopfraudcolorado.gov/index.html> to be notified and to learn about local fraud scams.
  
- b. Sign up for **DO NOT CALL REGISTRY**
  - i. **Colorado:** [www.coloradonocall.com](http://www.coloradonocall.com) 800.309.7041
  - ii. **National:** [www.donotcall.gov](http://www.donotcall.gov) 888.382.1222
  
- c. Develop a refusal script with your ward. Give your ward a copy to keep on them and save a copy in the Case Management System.
  
- d. Check if professional and investment product are licensed at [www.investor.gov](http://www.investor.gov)
  
- e. Consider freezing your ward's credit at <https://stopfraudcolorado.gov/fraud-center/identity-theft/credit-report-freeze.html>
  
- f. Planning for Diminished Capacity
  - i. Organize important documents
    1. Bank and brokerage statements
    2. Mortgage and credit information
    3. Insurance policies
    4. Pension and other retirement benefit summaries
    5. SSA payment information
    6. Contact information for financial and medical professionals
  
  - ii. Provide financial professionals with guardian emergency contact information if they suspect something is wrong
  
  - iii. Consider written instructions
- 7. Complete a **Trusted Contact Form** for your ward to provide to financial professionals/banking institutions
  - iv. Involve a family member or friend that you trust

National Guardianship Association Standards of Practice for Agencies and Program Providing Guardianship Services; Standards National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 13, 17 – 20, 23, and 24.

## Policy 6.10. GUARDIAN SUPERVISION

### Policy 6.10. GUARDIAN SUPERVISION

a. The Colorado Office of Public Guardianship (OPG) shall model the highest standard of practice for guardians. As such, the Colorado OPG will provide experienced supervision and support to all Public Guardians. All Public Guardians will strictly adhere to their duties as set forth in the Colorado Probate Code and they use the National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles; and National Guardianship Association Standards of Practice 1 – 16, 23, and 24 for professional guidance as to best practices in the event the Colorado Probate Code does not provide specific mandates or procedures.

b. The Director of the OPG will seek certification from the Center for Guardianship Certification for National and Master Guardianship certifications within five years of employment with the Colorado OPG.

c. OPG training and curriculum for Public Guardians is designed to lay a foundation for each Public Guardian to become certified. Public Guardians are strongly encouraged to pursue National and Master Guardianship certifications within five years of employment.

d. The Director for the OPG shall meet with each Public Guardian for a quarterly case review to ensure that individual goals are being met of both the Public Guardian and the wards whom the Public Guardian serves. These case reviews will be scheduled at a mutually agreed upon time and may take place in person or via an electronic meeting platform.

e. A weekly team meeting is required of all staff members. The meeting may take place in person or via electronic meeting platform. The meeting is intended to serve as a way to touch base with all team members to update about cases that are currently at the forefront of each Public Guardian. The weekly meetings are also designed to be a way in which Public Guardians can problem solve with one another and consult with other members of the team about resources, strategies, and ideas. Finally, the weekly meeting serves as a way to announce information, receive feedback as a group, etc.

The Office of Public Guardian will establish an Internal Ethics committee process for decisions that involve end of life or are ethically complex or controversial. The Ethics committee will establish guidelines for decision-making in such controversial or complex areas.

While the Public Guardians must strictly adhere to the Colorado Probate Code, the Colorado Probate Code does not outline decision-making procedures. When making end of life decisions, complex care or residential decisions, or decisions that could be deemed controversial, the Public Guardian must rely on his or her own expertise and whatever information he or she deems



necessary to fully inform these decisions. The Public Guardian is encouraged to rely on best practices, as outlined by the National Guardianship Association, and should, where non-emergent decisions arise, consult with the Director and/or the OPG ethics committee for further analysis and insight. Nothing about this process shall divest the Public Guardian of his or her authority pursuant to the Colorado Probate Code or pursuant to any Court Order and this process, while strongly encouraged, may vary slightly as ethical concerns are often case specific and emergency circumstances will likely require a different approach within the Public Guardian's discretion to act at all times in the ward's best interest and to exercise reasonable care, diligence, and prudence. General guidelines include:

- i. The Public Guardian will consult with the Director regarding any end of life decision, decisions deemed to be complex, decisions deemed to be high risk, or decisions that may be deemed controversial. If the Director believes more input is necessary to assist with the Public Guardian's decision, the Internal Ethics committee will be consulted in a timely manner where possible.
  - ii. The Public Guardian may handle placement matters unless the ward is to be moved to a more restrictive environment, such as a secured facility or unit. In that circumstance, the Public Guardian will consult with the Director. If the Director believes more input is necessary to assist with the Public Guardian's decision, the Internal Ethics committee will be consulted in a timely manner where possible.
2. For an individual that is hospitalized, the Internal Ethics Committee may consist of the Public Guardian, Director, hospital's Ethics Committee, and appropriate attending physician(s) and specialists.
3. For an individual that is not hospitalized, the Internal Ethics Committee may consist of an outside ethicist, Public Guardian, Director, OPG Commission member, and appropriate attending physician(s) and specialists. The outside ethicist may be a professor of ethics, bioethics and/or humanities from a local university program or Colorado Health Care Ethics Forum.

## **POLICY 6.11. GUARDIAN LIABILITY AND CONTRACTING ON BEHALF OF YOUR CLIENT**

C.R.S. § 15-14-316 (2) states, in part, "...A guardian is not liable to a third person for acts of the ward solely by reason of the relation. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the third party." National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 7 - 10; National Guardianship Association Standards of Practice 1, 7 – 13, 23, and 24.

A Public Guardian must exercise reasonable care when contracting for services on behalf of the ward.

1. Read the contract or form
2. Take concern with "Responsible Party" language – review with Director, as contractual language may need to be changed prior to signing
3. Signing of the contract. DO NOT sign as Responsible Party. Sign contracts as the ward, using, "Ward Name, Public Guardian Name as legal guardian for Ward Name"
4. NEVER just sign your name
5. Never sign Arbitration Agreements

## **Policy 6.12. MANDATORY REPORTING**

- j. Pursuant to C.R.S. 18-6.5-108, court-appointed guardians are required by law to report physical abuse, sexual abuse, caretaker neglect, and exploitation of at-risk elders and at-risk adults with intellectual and developmental disabilities. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 4 and 8; National Guardianship Association Standards of Practice 1 - 3, 5, 11 – 13, 16, 23, and 24.
  - An at-risk elder is any person who is 70 years of age or older.
  - An at-risk adult with an intellectual or developmental disability is a person who is 18 years of age or older who has an established neurological condition and demonstrates impairment of intellectual functioning and/or adaptive behavior.
- iii. As a mandatory reporter, a Public Guardian must make a report to law enforcement as soon as (within 24 hours) the Public Guardian witnesses or becomes aware that an at-risk elder and/or at-risk adult with intellectual and developmental disabilities has been or is at imminent risk for mistreatment (abuse, caretaker neglect, or exploitation).

- iv. Public Guardians are required to complete the interactive on-line training module for mandatory reporters available by CDHS – APS: <https://www.coloradoaps.com/about-mandatory-reporting.html>
  
- v. **To report mistreatment, contact:**
  - 1. The appropriate local law enforcement agency where the mistreatment occurred or where the adult lives. Do not call 911 unless a true emergency exists.
  
  - 2. The local county APS office.
  
  - 3. When reporting, provide the following information:
    - a. Name/address of adult
    - b. Any medical, physical, or cognitive conditions the adult may have
    - c. A description of the alleged mistreatment and the situation
    - d. Nature and extent of the injury
    - e. Alleged perpetrator name/address
    - f. Any other relevant information
  
- vi. Public Guardians should report self-neglect cases directly to the local county APS office.

For Denver County:

- **Denver Police Department: 720.913.2000**

<https://www.denvergov.org/content/denvergov/en/police-department/safety-prevention/At-RiskPersons.html>

- **Denver Adult Protective Services: 720.944.2994**

**Policy 6.13. Protection of Files/Records.** All files should be stored as indicated in Policy 6.11 .4. Document Storage.

- 1. Written releases must be received from the appropriate authorizing personnel prior to any material being transferred out of the Colorado OPG or the Public Guardian. Duplication of file contents without appropriate authorization is prohibited. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
  
- 2. To ensure confidentiality, a ward’s name will not be used in another ward’s file.

### **Policy 6.13.1. Access to Files/Records**

- a. A ward's physical and electronic files are confidential. Access to them shall be limited to the Public Guardians, Director, Staff Assistant, and Volunteers, as authorized. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
  1. The Director and Public Guardians shall be custodians of the files and shall control access to them.
  2. Wards may have access to their information unless it is deemed harmful to their treatment in some way. This sometimes is possible when a ward has a mental illness and such information may cause a setback in treatment or otherwise exacerbate their condition.
  3. Written consent of the ward or other appropriate authorizing personnel is required for the release of information to persons not otherwise authorized to receive it. This consent must be obtained each time a request is made. Blanket release forms are prohibited for use in guardianship files.
  4. Information from the file is released by the Colorado OPG only after the requesting individual or agency clearly establishes the need to know and only when the ward or other appropriately authorized personnel has signed an information release statement.

The Colorado OPG Identify Access and Security Management Policy for all Colorado OPG systems, applications, and networks is adapted from the Colorado Office of Public Guardianship Identify Access and Security Management Plan.

#### **1. STANDARD**

This standard establishes requirements for authentication and password management for all Colorado Office of Public Guardianship (hereinafter "OPG") systems, applications, and networks. It also establishes security requirements for conveying access credentials to the owner (User) of an account.

#### **2. SCOPE**

This standard applies to all OPG users, including all employees, interns, contract staff, consultants, volunteers, vendors, and other authorized users. This standard also applies to all systems connected to the OPG network and all OPG data, confidential or otherwise, including data shared with third parties. This standard also applies to

all OPG systems or applications used by the OPG workforce requiring user authentication, regardless of where the system is hosted or who is hosting it (ex: AWS).

At this time, only user IDs and passwords are in scope. Other access credentials such as X.509 certificates, tokens, one-time passwords, etc., are not in scope. A subsequent release of this standard may cover one or more of such additional credentials.

Only requirements for individual users' credentials are covered at this time. This standard does not provide requirements for credentials related to organizational access (for example, Site-to-Site Virtual Private Networks).

### 3. RATIONALE

OPG requires authentication systems to uniquely identify users of its systems in order to restrict access only to authorized users. Weaknesses in authentication and password management may reduce OPG's ability to attribute system actions to a unique individual and may increase the risk of system and data misuse. In addition to risk mitigation, OPG must authenticate users accessing confidential data in order to enforce restricted access provisions required by any applicable compliances (for example: the HIPAA Security Rule, HiTECH, Sarbanes Oxley, SEC, PCI Data Security Standard, and other state and federal privacy laws).

Stolen access credentials are often the cause or the starting point for most security breaches. It is therefore important that OPG establishes appropriate standards to ensure that the access credentials, after they are initially created or later reset or updated, reach the account owner (User) in a secure manner and that no one other than the user is able to use those credentials.

### 4. STANDARD DETAIL AND COMPLIANCE

OPG requires authentication to uniquely identify all users of its systems. ("Users" in the context of this standard includes any individual, including staff, contractors and third parties, system account or service account.) The following requirements will be deployed to enforce unique user identification and individual account access and activity tracking. Any deviation from the following requirements, due to whatever restrictions or limitations, any exception to these requirements, an exception form and compensating controls must be submitted.

#### 4.1 UNIQUE USER IDENTIFICATION

All users will be assigned unique user names that establish individual identity. Please reference Section 4.3 for specifics.

Any single user will have only one account into a given system. The only exception may be for administrators who would have one user-level account into a given system, plus one or more administrative-level accounts, depending upon the administrative rights required. Justification for each additional administrative account must be documented in an exception request form.

User Social Security Numbers may not be included in a user ID or account in whole or in part for any system or application.

Each user account must be assigned exclusively to the user who was originally assigned the account. Shared accounts are not permitted unless compensating controls are documented for use in the following areas:

- Shared workstations and/or devices where physical access is restricted to only authorized users.
- When a shared workstation and/or device is logged into the network with a workstation account, each user must uniquely authenticate to specific applications that include confidential data.
- Workstation and/or device accounts must not include administrative access privileges.
- Workstation and/or device account must not enable administrative privileges to bypass the application logging in order to access confidential data.
- Workstation and/or device accounts must be logged at a higher level and alerts set to identify potential misuse.
- Any workstation and/or device that collects, processes, stores or transmits cardholder data (PCI) may not use workstation accounts.

#### 4.2 USER AUTHENTICATION

A Directory Service has been deployed as the primary tool to provide enterprise wide logical access controls to objects including files, directories, and other systems. Systems, databases, and applications will be configured to utilize the Directory Service for user account management, authentication, and password management unless an exception is obtained from the Director.

The following provisions must be in place to authenticate each user prior to accessing critical systems or confidential data; these provisions also apply to any outsourced services hosted by third parties:

- All user account activity will be logged to provide historical user account activity audit trails.
- Accounts will be locked out after 6 failed logon attempts.
- After lockout, the account may not be configured to automatically unlock and must be manually unlocked by an authorized IT administrator, or by the user taking action through use of available password reset tools.
- User identity must be verified prior to unlocking, re-enabling, or resetting account privileges.
- Inactive user sessions will time-out after 10 minutes.
- All user accounts that are inactive for 90 days will be disabled from use, unless an exception is obtained from the Director, Security.
- Unless otherwise noted in the account, disabled accounts may only be re-enabled on approval from the user's direct supervisor. The Director, Security may determine that a specific account may not be re-enabled due to risk to OPG systems or data.

- o All disabled user accounts will be deleted after 90 days from the date of the account being disabled, unless an exception is obtained from the Director, Security.
- o Accounts used by vendors for remote maintenance will be disabled until required for use. These accounts will be disabled upon completion of the planned or emergency maintenance window.
- o All default non-user accounts (e.g., guest, test, etc.) will be removed or disabled from systems prior to production deployment.

#### **4.2.1 ADDRESSING AUTHENTICATION LIMITATIONS FOR SYSTEMS, SERVICES, APPLICATIONS OR DEVICES**

When a system, service, application or device does not support enforcement of the authentication requirements of this standard, the responsible Director must create an exception document, including a description of the issue and appropriate remediation efforts.

Vendors whose products do not support enforcement of this standard should be notified that these capabilities must be added to their authentication mechanism. The ability to support this policy should be considered as a factor in the vendor selection process.

#### **4.2.2 TWO FACTOR AUTHENTICATION FOR REMOTE ACCESS**

Two factor authentication must be utilized for Remote Access to the OPG network over approved technologies (SonicWall™) and is recommended for use for all non-console administrative access.

#### **4.3 USER ACCOUNT LOGON NAME REQUIREMENTS**

Logon names for each account must be unique and have a maximum of 15 characters. Logon names for employees, non-employees, and Partner accounts follow the same naming criteria. If the length of the logon name exceeds the maximum of 15 characters, refer to the following guidelines:

- o First initial followed by full middle name
- o Shorter version of the first name
- o Final logon name must be related to the user's legal name
- o Only use Active Directory acceptable characters
- o Spaces/Symbols: Do not include spaces, dashes or apostrophes in logon names

#### **4.4 USER ACCOUNT PASSWORD REQUIREMENTS**

At a minimum, OPG will enforce the use of strong passwords to authenticate user identities within Remote Access Systems. Where supported by standalone systems, services, or applications, strong passwords will be configured.

If systems, services, or applications do not enforce or support strong passwords, an exception request must be submitted to the Director, Security along with the

compensating controls deployed to protect the confidential data.

Strong passwords must be at least eight (8) characters in length, and contain at least three of the following categories:

- o One (1) lowercase character
- o One (1) uppercase character
- o One (1) numeric character
- o One (1) special character

If system or application configurable, passwords must be constructed such that they are not listed in any commonly available dictionary, contain any commonly known information, such as username, family or pet names, etc.

User passwords must automatically expire every 90 days. Once expired, the user is required to change his/her password. Passwords for system accounts and service accounts that have been established for automated application transactions may be exempted from automatic expiration. An exception request must be submitted to the Director along with the compensating controls deployed to protect confidential data. In addition, appropriate password security measures, including encryption and secure storage or vaulting, must be in place and approved in writing by the Director.

- o Minimum password age is 4 days to prevent users from cycling their passwords.
- o Passwords may not be reused for at least 8 password change periods and changed passwords cannot use the same phrase with simple changes like "Password1" to "Password2," if system or application configurable.
- o First-time passwords (e.g., passwords assigned by IT administrators upon account creation or during password resets) must be set to a unique value per user and must be configured for the user to change password at next login.
- o Passwords in electronic format, when held in storage or transmitted via external networks, must be encrypted.
- o Passwords in electronic format must not be stored in clear text in batch files, automatic login scripts, software macros, terminal function keys or computers without access control or in locations where unauthorized persons might discover them.
- o Passwords should never be written or stored in clear text, and when passwords are entered, the password should be masked in the entry screen.
- o Passwords assigned by IT administrators upon account creation must be unique.
- o Each system which permits logon should display a warning banner visible to all users who attempt to login. One recommended banner reads:  
"Access to this system or subsequent systems is For Authorized Users Only. Continued access by users represents that they are authorized users. All information processed, stored, accessed or transmitted to or from this system is subject to monitoring and recording at all times. Users should assume no expectation of privacy in using this



system.”

#### 4.4.1 LDAP PASSWORD STANDARDS SUMMARY

The following table summarizes key requirements for Passwords:

Requirement	AD Password Standards
Enforce password history	8 passwords
Maximum password age	90 days
Minimum password age	4 days
Minimum password length	8 characters
Password must meet complexity requirements	Enabled
Store passwords using reversible encryption	Disabled
Account lockout threshold	6 times
Inactive user session time-out	10 minutes

#### 4.4.2 SHARED ACCOUNT PASSWORD REQUIREMENTS

Upon a user’s change in job responsibilities or upon a user’s termination, the password(s) of any shared account(s) to which the user has access must be changed immediately. It is the responsibility of the user’s manager to initiate this password change process.

#### 4.5 USER ACCOUNT EMAIL REQUIREMENTS

When manually creating an email address, it must be the user’s logon name, plus the domain name (e.g., [logonname@Colorado-OPG.com](mailto:logonname@Colorado-OPG.com)).

#### 4.6 PRIMARY NETWORK ACCESS CREDENTIALS

The following requirements apply for conveyance of Directory Service credentials to users:

For Vendors that have prominent relationships with OPG, the credentials may be sent to the authorized vendor contact(s), by secure email, or through the OPG project portal.

Note: All initial/changed/reset passwords must be temporary passwords set to be changed upon initial or next login.

#### 4.6.1 STORAGE OF ACCESS CREDENTIALS FOR ACCESS BY USERS

As a standard rule, OPG does not currently authorize use of centralized databases or applications for storing of access credentials, regardless of whether they are

encrypted or otherwise. In the event that there is a special business need to establish such a database or application, OPG Information Security may approve such use on a temporary basis, but only after a detailed risk assessment and ensuring that appropriate controls are in place.

## 5. APPROACH

The following will be established to meet this standard:

- Establish unique user identification with session time-out.
- Require authentication prior to granting users access to critical systems and confidential data.
- Enforce strong password management.

### 5.1 CONTROL EXCEPTION PROCESS

This standard includes information security controls designed to protect OPG Information and IT Assets. These control requirements establish the minimum level for control implementation.

OPG System Owners may find it necessary on occasion, to employ compensating security controls. This may occur, for example, when it is not possible or feasible to implement a security control in the baseline or when, due to the specific nature of an information system or its environment of operation, the control in the baseline is not a cost-effective means of obtaining the needed risk mitigation.

A compensating security control is a management, operational, or technical control (i.e., safeguard or countermeasure) implemented by OPG System Owners in lieu of a recommended security control from the OPG Security Standard, that provides an equivalent or comparable level of protection for an information system and the information processed, stored, or transmitted by that system or activity.

If specific operating environments or legacy systems cannot operate with the minimum controls requirements, alternative or compensating controls should be justified in accordance with the Control Exception Process procedure.

The OPG System Owner may continue to operate the System using the controls specified in the Compensating Control form on a temporary basis until final approval of the compensating control is granted.

Exceptions that do not have an expiration date will be reviewed by the Director, Security annually to see if an extension is still required or if the exception can be closed.

## 6. ENFORCEMENT

The OPG Director, Security, will enforce and approve exceptions to the Enterprise Information Security Policies.

The Director has the primary responsibility to ensure this standard is enforced.

#### 7. DEFINITIONS

- **Authentication** means any process by which an application or system verifies the identity of a User who wishes to access it.
- **Confidential data** means information that is critical to the effective delivery of services, data used to manage financial reporting, and Personally Identifiable Information (PII) that includes Electronic Protected Health Information (ePHI), cardholder data used in credit and debit information provided to OPG.
- **User** means any individual (including staff, contractors and third parties), system account, service account, or application that is granted access to systems and data and interacts with that system or data.

#### 8. REVIEW OF STANDARD

Ongoing review of this standard will be conducted by the Director with input from the Colorado Office of Public Guardianship Commission and/or appropriate stakeholder(s).

### **Policy 6.13.2. Review of Active Files/Business Records**

- a. Each Public Guardian will be responsible for the appropriate maintenance of case files for the wards assigned to them. This will include an annual review of the file and materials within. This can usually be completed at the time of the Annual Report to the court. The Public Guardian should identify any information which is needed and not present and secure any information that needs to be updated and secured and should at this time review the materials and documents that can be transferred to an electronic file or purged completely. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
  1. The following are some guidelines for this process:
    - i. The Public Guardian must ensure that enough information remains in the file for the proper management of the case.
    - ii. Do not destroy any originals or copies of any documents that cannot be replaced from other sources. This includes correspondence, court documents, and Case Notes. If these are not needed on a day-to-day basis, they may be moved to an electronic file only. For example, a hard copy of

the Letters of Guardianship will be something to keep in hard copy as well as electronically.

- iii. Expired team care plans (except Individual Guardianship Plans and assessments, such as psychological evaluations) may be purged and shredded after the new plan is received. This is true of new evaluation material with the exception of updates that are formulated to be used with a previous report.
- iv. Retention Policy. The Colorado OPG shall properly label all records so they can be properly destroyed per SSA, VA, statutory, and/or agency deadlines. At the appropriate time of destruction of documents. The Colorado OPG shall shred any papers with identifying information, such as ward's name, Social Security number, date of birth, sex, and address. Identifying information could be on bank records, bills, receipts, checks, and internal records.
- v. The Director and Staff Assistant will audit files annually for quality assurance. The Director will review all Individualized Guardianship Plans quarterly and in accordance with the scheduled case reviews with Public Guardian's.

b. Narrative Records/Case Notes

- 1. It is imperative that ongoing narrative data be recorded on a daily basis for ward cases and services. Narratives should be written to document events and work on the day on which it occurs. A weekly review of each case must be performed by the Public Guardian to ensure any concerns, meetings, appointments, etc. are timely addressed. Specifically, the Public Guardian is to continually document the following within the Case Management System:
  - i. Narrative descriptions of the processes in which they are involved with the ward:
    - 1. Any contacts with the ward (required monthly face-to-face visit as well as phone, email, and other modes of contact); and
    - 2. Any contact with service providers, family, the courts, Public Guardians and the Director about the case.

- ii. This type of documentation is required to allow for ready accountability to supervision, the ward, the court, service providers, family members, and other interested persons. In the aggregate, it assists in communicating how work is done for individuals through the Colorado OPG and helps to identify if additional assistance is needed. This information can be communicated in interim and the Director Report in 2023 to the General Assembly. It further provides for a foundation for planning, providing, reviewing and evaluating services to the ward. It establishes an ongoing chain of data and information which is vital.
- iii. All narratives and time spent on case activities MUST be entered into the CMS for the appropriate ward within 24 hours of the case activity. No hand-written narratives or time sheets will serve as a substitute for CMS entries of this nature to ensure consistent recordkeeping.

### **Policy 6.13.3. Document Storage**

Upon receipt of a ward's document and/or record, it shall be filed in the Colorado Office of Public Guardianship (OPG) office secured file cabinet and/or the centralized online document storage (OneNote and SharePoint) and/or the Case Management System. The Colorado OPG will maintain a consistent file management system in the file maintenance of a ward's documents and/or records. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

- a. A ward's documents and/or records pertaining to their case shall be labeled and filed accordingly:
  - 1. Records retention shall follow the schedule set forth based on the document type.
  - 2. Hard copies of all documents and/or records shall be scanned and filed in the centralized storage for digital documents – see procedures below. The hard copy will be stored in the Colorado OPG office secured file cabinet. All Colorado OPG staff will keep all documents secure (contained in a safe area, where documents will not be accessible to others and free from possible damage).
    - i. If there are 2 originals (ex. letters of appointment, etc.), one original shall be kept in the Public Guardian's office file cabinet and the second with the Public Guardian's file for the ward.

- i. It is not necessary to keep paper files once they have been scanned unless it is a document which is likely to be required in its original form. Such documents may include, but are not limited to birth certificates, death certificates, Letters of Guardianship or Conservatorship, immigration documents, etc.
3. If the Public Guardian comes into the possession of a large amount of a ward's documents and/or records, the following will be completed:
  - i. Review all the items in possession.
  - ii. Search for the historically significant items (i.e. birth certificate, medical records, medical diagnoses etc.).
  - iii. Scan the historically significant items into the ward's file and store in the centralized storage for online documents.
  - iv. Mark which of the documents have been scanned.
  - v. Secure all documents that cannot be stored electronically in a locked cabinet, locked box, locked storage unit, etc. as the circumstances require. Ward items not in the immediate possession of the Public Guardian, must be secured if they are located remotely, such as a ward's home, vehicle, etc.
4. Naming Convention of File Folder – The file folder shall be named as “Ward Last Name, Ward First Name Ward County PR Case Number” *ex. Doe, John County PR 01-123.*
5. Naming Convention of Court Documents, Forms, files, etc. – The electronic files shall be named as “Ward Last Name, Ward First Name\_Document Month.Day.Year” *ex. Doe, John\_ Letters of Appointment 01.01.2020.*
6. Naming Convention of Benefit Renewals, other documents with a deadline, etc. - The electronic files shall be named as “Ward Last Name, Ward First Name\_Document Due Month.Day.Year” *ex. Doe, John\_Medicaid Renewal Due 01.01.2020*
7. Naming Convention of completed Benefit Renewals, other documents with a deadline, etc. - The electronic files shall be named as “Ward Last Name, Ward First

Name\_Document Completed Month.Day.Year” ex. *Doe, John\_Medicaid Renewal Completed 01.01.2020.*

**8. If unsure about whether a document should be destroyed, contact the Director or Staff Assistant for guidance.**

b. Centralized Storage for Digital Documents

1. Advanced Directives. Digital copies of advance directives will be stored in the CMS system and OneDrive.

2. All Other Documents. Digital copies of all other documents will be stored in the CMS system and OneDrive. Examples include filed court forms (inventories, etc.), wills, annual and monthly budgets, receipts for stored value card purchases, bank reconciliations, birth certificates, car titles, etc.

i. Files within OneDrive shall be organized as described below:

1. Each Service Area will have their own folder named for them. ex. *Denver County.*
2. Within each Service Area’s folder will be separate folders for each individual ward. The folder will use the naming convention of Ward Last Name, Ward First Name Ward County PR Case Number” ex. *Doe, John County PR 01-123*
3. Within the ward’s folder will be all documents and/or records pertaining to the ward including Medical Records, Letters of Appointment, Court Forms, etc. These items will be named in the same manner “Document/Record Type” ex. *Letters of Appointment*
4. Any inactive/closed cases will be housed within the Archived Cases folder.

ii. All digital documents and/or records stored within OneDrive shall follow the following process:

1. Scan the document.
2. Save the digital version of the document following the naming convention outlined above.
3. Save/Transfer the digital version of the document to OneDrive.
4. Delete any other copies of the digital version of the document if it was saved in another location within OneDrive.

iii. Any case in which the Public Guardian is no longer a Guardian and/or Conservator will be considered an Archived Case:

1. Upon the closing/termination of an individual ward's case, the ward's case folder will be transferred/moved to the Archived Cases folder by the Staff Assistant.
2. Archived Case folders will be deleted/destroyed in accordance with the Records Retention schedule.

### **Policy 6.14. Emergency Coverage Policy and On-Call Policy**

To ensure someone is available with the authority to make important decisions that protect and support the individuals by the Colorado Office of Public Guardianship (OPG), there must be continuous coverage. The Emergency Coverage Policy closely follows the On-Call Policy. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 1 - 8; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.

- a. The Director or his/her designee shall maintain an On-Call List and Schedule that identifies which Public Guardian is responsible to provide on-call service for a specific time period. The On-Call List will also identify that the Director is the backup on-call.
- b. The On-Call List and Schedule will be maintained on Share Point. Schedules for the On-Call List and Schedule will be made a month in advance, at a minimum. Any vacations or other anticipated time off should be requested at least one month prior to its anticipated use date to allow for ease in scheduling and maintaining the schedule of the On-Call List and Schedule once it is developed each month. In extenuating circumstances, the On-Call List may be modified, such as when a Public Guardian has an unforeseen absence due to illness, etc. and he or she cannot perform the duties required when on-call.
- c. All Public Guardians are always required to have their cell phone turned on, except when on pre-approved vacation, or if other extenuating circumstances arise that are pre-approved by the Director.
- d. Weekdays:

Public Guardians are primarily responsible for the needs of the wards, including potential emergencies outside of the daily 8:00 a.m. to 5:00 p.m., Monday through Friday normal business hours.

Accordingly, Public Guardians are on-call, around the clock, for response to emergencies experienced by their wards beginning Monday 8:00 a.m. through Friday at 5:00 p.m. Each Public Guardian will be responsible for their own designated wards, unless covering for



another Public Guardian's wards during the other Public Guardian's vacation; or during weekend and holiday On-Call responsibilities.

e. Weekends:

Weekend On-Call responsibilities will begin Friday at 5:00 p.m. through Monday at 7:59 a.m. Regular weekend on-call will be rotational, adjusted for equitable distribution of weekends in proximity to state recognized holidays. There will be one Public Guardian during regular weekend on-call duties and, therefore, will be responsible for all wards assigned to the Colorado OPG for emergency response during regular weekend on-call. Weekends that are in approximation to a state recognized holiday will be covered by one Public Guardian who is responsible for all ward's emergencies. Assignments of weekends next to holidays will be on a rotational basis.

Public Guardians are required to update Case Notes in the Case Management System by 5:00 p.m. Friday. Public Guardians are required to keep updated "On-Call Notes" in the Case Management System. The purpose of "On-Call Notes" is to notify the on-call Public Guardian of any anticipated issues that could occur over the holiday and weekend.

f. Holidays

The Colorado OPG will provide on-call and emergency responses during all holidays. Holiday on-call responsibilities by Public Guardians will be on a rotational basis both within annual holidays and between one year and another. Public Guardians will be responsible for all wards assigned to the Colorado OPG during Holiday on-call coverage. Employees who are on call for a holiday will be able to reschedule the paid holiday within the same month.

The Office of Public Guardian recognizes the following state holidays:

- New Year's Day (January 1)
- Martin Luther King, Jr Day (Third Monday in January)
- President's Day (Third Monday in February)
- Arbor Day (Last Friday in April)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day/Indigenous People's Day (Second Monday in October)
- Veterans Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25)

g. On-Call Schedule Substitutions:

- a. On-Call schedules will be developed and published at a minimum of three months in advance. The Public Guardian is responsible to fulfill the hours for which they are assigned. **Public Guardians can exchange on-call days, including weeknights, weekends, holidays. Each Public Guardian involved in the exchange must agree to the change and contact the Director for approval.** Unless the substitution is required because of an emergency or illness, exchanges must be approved two weeks prior to the on-call date. If for some reason the substitute Public Guardian does not fulfill the on-call responsibilities, the Public Guardian originally scheduled will be responsible for completing the on-call responsibilities or finding an alternative substitute.
- b. Holiday and On-call Public Guardians are to be within Colorado geographic borders when on-call and are required to have access to internet and phone during on-call coverage.
- c. CMS documentation of emergency response situations are to be documented in CMS prior to Monday at 8 a.m.

h. Emergency Response

Emergency response is when the Public Guardian must respond to an emergency regarding a ward outside of normal business hours. Emergency response may be via telephone, computer or in-person. Emergency response may be for a Public Guardian's own designated wards; or may be for another Public Guardian's designated wards when a Public Guardian is responsible for holiday, weekends, or vacation on-call coverage.

i. Public Guardian Vacation

- a. Vacation leave must be applied for in advance by the Public Guardian and may be used only when approved by the Director. However, prior approval is not required when the employee is required to use vacation leave as sick leave or chooses to use vacation leave instead of going on unpaid family/medical leave. The Director can only approve vacation leave after it has been earned, up to a maximum of 40 hours. Vacation leave shall be designated so as not to interfere with the efficient operation of the Office of Public Guardianship. Vacation leave need not be taken all at one time during the year. All employees must be given the opportunity to take their vacation leave before it expires.
- b. **It is the responsibility of the Public Guardian to arrange for on-call coverage for their wards during their vacation.** It is preferable that coverage will be provided by Public Guardians who are in geographic proximity to the Public Guardian's Service Area. The Vacationer and the coverage Public Guardian will provide written verification of the agreement and provide an updated schedule with the application for vacation to the

Director. Unless there is an emergency or illness, all vacation requests shall occur at least two weeks prior to the first day of vacation.

**c. Director and Commission On-Call Responsibilities:**

- i. The Director is on-call 24/7, 365 days per year.
- ii. During times when the Director utilizes Paid Time Off (PTO), the Chair, or one member of the Commission should the Chair be unavailable, will be on-call for emergency purposes. Advance notice to the Chair and/or Commission member will be provided.
- iii. During times when the Director utilizes PTO, the Staff Assistant and Public Guardians will utilize a team approach should an emergency arise. The team will notify the Director via email of the emergency, the Team discussion, and the Team decision and actions regarding the emergency.
- iv. Should the Team be unable to reach a unanimous decision, or seek further discussion or advice, the Team will contact the On-Call Chair and/or Commission member. The Team will update the Director of the final decision and actions regarding the emergency.

**d. Verizon Call Forwarding.** See Handout ***How to Use Guide: Call Forwarding***

- i. Public Guardians not on-call for a holiday or weekend will turn on call forwarding by 4:45 p.m. on Friday.
- ii. Call forwarding will be forwarded to the Public Guardian's work mobile number who is scheduled to be on-call.
- iii. All Public Guardians are to confirm that call-forwarding is working properly before 5:00 p.m. on Friday.

## **Policy 6.15. Critical Incidents**

- a. The Colorado Office of Public Guardianship (OPG) Critical Incidents policy will assist in determining how staff will respond to critical incidents. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, VI, and VIII; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 – 16, 23, and 24.
- b. Knowing what to do in a crisis situation can alleviate the effects of such an event. To be proactive, the Colorado OPG 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). Upon discovery of a critical incident involving a ward or staff, the Public Guardian shall take measures to ensure the individual is safe from harm.

- c. The following incidents and/or events involving a ward shall be considered serious reportable incidents and must be reported to the Director and documented contemporaneously in the Case Management System (CMS):
  - 1. Illness, injury, or a medical procedure requiring overnight hospitalization
  - 2. Death of a ward
  - 3. Suspected criminal activity involving a ward either as a victim or perpetrator
  - 4. Allegations of abuse or neglect that result in hospitalization or result in injuries of unknown origin
  - 5. Medication errors that result in medical treatment or hospitalization of the ward
  - 6. Pregnancy of or pregnancy attributable to a ward
  - 7. Actions that could reasonably result in litigation either against or by the ward against a third party
  - 8. Issuance of a Do Not Resuscitate Order (DNR)
  - 9. Marriage of a ward
  - 10. End-of-life decisions concerning a ward
  
- d. In situations where the Public Guardian suspects abuse or neglect of the ward, the Public Guardian must contact Adult Protective Services (APS) to file a report within 24 hours of becoming aware of the suspected abuse/neglect. The Public Guardian must also immediately notify the Director that a report to APS has been made. The report must be documented within the CMS system.
  
- e. In situations where the Public Guardian feels the safety of the ward or others is of significant harm, the Public Guardian should contact local law enforcement. The Public Guardian must also immediately notify the Director that law enforcement was contacted, and the incident must be documented within the CMS system.
  
- f. The Public Guardian in conjunction with the Director shall strategize to advocate for the ward involved in a serious incident and shall not be kept from:
  - 1. Asking questions;
  - 2. Obtaining information;
  - 3. Requesting a certain course of action;
  - 4. Objecting to a plan of care or change in program; or
  - 5. Informing other interested persons of the incident.
  
- g. In situations where the Public Guardian prefers to debrief critical incidents related to the OPG Office and/or the Director, the Public Guardian may contact an individual member of the Internal Ethics Committee and/or the Colorado OPG Commission Chair.

- h. All communications regarding the Critical Incident shall be logged within the CMS. Critical Incident Reports and corresponding documentation shall be filed under the ward's case file within the CMS and OneDrive.
- i. Critical Incidents will be tracked on a regular basis to determine any trends that may need to be addressed.
- j. Once the Internal Ethics Committee policy is finalized, it may be determined appropriate to have an individual member of the Internal Ethics Committee lead Critical Incident debriefing.

## **Policy 6.16. Business Continuity and Disaster Recovery Policy**

The Colorado Office of Public Guardianship (OPG) Business Continuity and Disaster Recovery Policy is adapted from the Colorado Office of Public Guardianship Business Continuity and Disaster Recovery Plan. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V, and VI; National Guardianship Association Ethical Principles 6 and 8; National Guardianship Association Standards of Practice 1, 11 – 13, 23, and 24.

### **1. POLICY**

This policy establishes the plan for business continuity in the case of a failure of primary infrastructure or systems, applications, and networks.

### **2. SCOPE**

This policy applies to all Colorado OPG technology instances and users, experiencing a technology failure. The planning applies to all Colorado OPG systems or applications used by the Colorado OPG workforce. Colorado OPG is a State of Colorado Agency providing the service of public guardianship to qualifying Wards. This document discusses the Business Continuity and Disaster Recovery plan to ensure sustainability of the Business, Wards and Stakeholder support.

#### **2.1. Desktop-based:**

- Microsoft® Windows™ 10 (End-user OS) (Microsoft® Recovery enabled)
- Microsoft® Office 365 (2016) productivity suite (communication, collaboration), Foxit PhantomPDF® (documentation).
- Google® Chrome™, Microsoft® Edge© browsers.

#### **2.2. Server-based:**

- Microsoft® Office 365 (2016) (email, calendar) backup enabled.
- Salesforce Enterprise Sales Cloud Winter 2019 Release backup enabled.
- WordPress™ v5.3.2 mirror instance enabled

- smartSTATUS™ (secure project management system) backup enabled.

### 3. HOSTING

Primary Hosting Provider: Amazon Web Services

Each Colorado OPG technology instance consists of the following components:

- Web server (code base, themes, files and buttons)
- Windows service
- Database server
- File store
- SMTP server

Business Continuity Hosting Provider: (private cloud hosting Amazon Web Services EC2 S3) Backup routine: incremental daily, full weekly.

### 4. RATIONALE

Colorado OPG and its Users require continuity of systems to support existing implementations of Cloud solutions provisioned by providers named above.

### 5. STANDARD DETAIL AND COMPLIANCE

Colorado OPG requires all internal Users to be aware of the business continuity plan and conditions for all users of its systems. (“Users” in the context of this standard includes any individual, including staff, contractors and third parties, system account or service account.)

### 6. RECOVERY ROUTINES

Problem: Cloud Technology Provider service (web site function) is unresponsive.

Solution:

Point domains Colorado-opg.org to IP  
XXX.XXX.XXX.XXX Login https://colorado-  
opg.org as [unique].

Click “Settings” link on the left menu.

Test.

Problem: Cloud Technology Provider service (CSM function) is unresponsive.

Solution:

Contact Salesforce Customer support.

Problem: Cloud Technology Provider service (Office365 function) is unresponsive.

Solution:

Contact Salesforce Customer support.

A NUMBER OF SIMILAR CHANGES ARE DESCRIBED in the Plan.

#### 7. ARCHITECTURE

A NUMBER OF DIAGRAMS ARE INCLUDED in the Plan.

#### 8. DEFINITIONS

- **Authentication** means any process by which an application or system verifies the identity of a User who wishes to access it.
- **Confidential data** means information that is critical to the effective delivery of services, data used to manage financial reporting, and Personally Identifiable Information (PII) that includes Electronic Protected Health Information (ePHI), cardholder data used in credit and debit information provided to Colorado Office of Public Guardianship.
- **User** means any individual (including staff, contractors and third parties), system account, service account, or application that is granted access to systems and data and interacts with that system or data.

#### 9. REVIEW OF PLAN

Ongoing review of this plan will be conducted by the Director with input from the Colorado Office of Public Guardianship Commission and/or appropriate stakeholder(s).

### **Policy 6.17. Quality Improvement**

- a. The Colorado Office of Public Guardianship (OPG) will ensure the integrity of the public guardianship services. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V - VIII; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 16, 23, and 24.
- b. Individuals under guardianship may be able to articulate their feelings about the service. The Colorado OPG will seek their input through an internal evaluation, as well as seek input from other stakeholders such as funding and referring agencies, courts, the Colorado OPG Commission, 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.

- c. Those interacting with certain policies and procedures will be responsible for evaluating their consistency with practices of the OPG. When an inconsistency is found, it will be noted, discussed by the staff, and adjusted per compliance with model practice and ethics as identified by the National Guardianship Association.
- d. On an annual basis, the Colorado OPG will solicit input from stakeholders that are both internal and external to its operations. The process will include assistance of the Stakeholder Panel to ensure maximum inclusion and feedback. This collected information will be added to reports submitted to the General Assembly to offer a public response as to the services the OPG provides and any suggestions for improvement.
- e. Within five years of beginning operation, the Office of Public Guardian will solicit an external evaluation from a peer Office of Public Guardian from another state who operates under the judicial branch and/or from the National Guardianship Association.

### **Policy 6.18. Complaint Process**

Pursuant to C.R.S. § 13-94-105 (2)(f), The Colorado Office of Public Guardianship establishes the following process for receipt and consideration of, and response to, complaints against the office, to include investigation in cases in which investigation appears warranted in the judgment of the director. National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards I – III, V - VII; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1, 11 – 13, 23, and 24.

**This process is NOT intended for private guardianship cases. To raise a complaint about a private guardianship, please contact the Denver Probate Court or the County Court where the guardianship was filed.**

**Steps for Filing a Complaint:** All complaints against the office shall be in writing using Complaint Form 1. Complaint Form 1 is available on the Colorado OPG web site. Complaint Form 1 can be mailed to an individual upon their request.

1. Send or deliver the completed Complaint Form 1 to the Director.
  - a. You may attach copies of any supporting documents to Complaint Form 1. The Colorado OPG will not return the documents to you.
  - b. Complaint Form 1 must be sent by mail or electronically or by facsimile and delivered directly to the Director.



Colorado Office of Public Guardianship, Director  
3900 East Mexico Avenue, Suite 300  
Denver, Colorado 80210

Facsimile: 720.552.5215

Email: [Info@Colorado-opg.org](mailto:Info@Colorado-opg.org) or [Sophia.Alvarez@colorado-opg.org](mailto:Sophia.Alvarez@colorado-opg.org)

2. Upon receipt of the Complaint Form 1, the Director will have fourteen (14) calendar days to respond in writing.
3. After review of Complaint Form 1, if further investigation appears warranted in the judgment of the Director, the Director shall seek more information and, if necessary, shall file a request to set the matter for hearing before the judge.
4. If the Director has not satisfactorily responded to your complaint, you may proceed to Step 6.
5. If you have a complaint specifically against the Colorado OPG Director, you may send Complaint Form 1 to the Colorado OPG Commission as indicated in Steps 1 and 6.
6. After fourteen (14) calendar days, if you are still dissatisfied with the response from the Director, please submit Complaint Form 2 to the Colorado OPG Commission.

Colorado Office of Public Guardianship Commission, Staff Assistant  
3900 East Mexico Avenue, Suite 300  
Denver, Colorado 80210

Facsimile: 720.552.5215

Email: [Info@Colorado-opg.org](mailto:Info@Colorado-opg.org)

7. Upon receipt of Complaint Form 2, the Colorado OPG Commission will respond in writing to your complaint within fourteen (14) calendar days.

## Policy 6.19. Self-Care and Compassion Fatigue

National Guardianship Association Standards of Practice for Agencies and Programs Providing Guardianship Services Standards III, V, VI, and VIII; National Guardianship Association Ethical Principles; National Guardianship Association Standards of Practice 1 - 16, 23, and 24.

- a. **Self-Care and Emotional Intelligence**
  - a. **Why Some People Get Burned Out and Others Don't – Harvard Business Review** (handout)
  - b. **Stress Management – 10 Ways to Stay Stress Free** (handout)
  - c. **10 Rules for the Ride of Your Life** (handout)
  - d. **5 Techniques for a Mindful Day** (handout)
    - i. It's Not All in Your Head
    - ii. Body Language
    - iii. Tea Party
    - iv. S.T.O.P.
    - v. Tuning In
  - e. **Calm App – what are your favorites?**
- b. **Compassion Fatigue** (handout)
  - a. [www.compassionfatigue.ca](http://www.compassionfatigue.ca)
  - b. [www.compassionfatigue.org](http://www.compassionfatigue.org)
- c. **Appreciation Language Quiz** (handout)
  - a. **Words of Affirmation:** Some employees appreciate verbal acknowledgement that their work is appreciated. A simple “good job” to the employee or publicly recognizing – perhaps during a meeting – a job well done will be received best by employees whose primary language of appreciation is through words of affirmation.
  - b. **Acts of Service:** Another way appreciation is accepted from coworkers or supervisors is through acts of service. Small gestures that show workers they are valued can go a long way. A few service-based acts: helping with a difficult project, assisting with technology problems, carrying office supplies and delivering lunch or coffee.

- c. **Receiving Gifts:** Some employees value material objects as a sign of being rewarded for extraordinary performance at work. An employee engagement program where employees can redeem their efforts for products or experiences caters perfectly to these employees’ desires.
  
- d. **Quality Time:** Companies whose cultures are centered around teamwork and being visible to one another understand how face time is a symbol of appreciation and belonging in the workplace. Aside from offering company outings like picnics and volunteer opportunities, some employees value one-on-one meetings and check-ins. If supervisors simply send “good job” emails, this won’t resonate as well with an employee whose primary language of appreciation is quality time.

**What is my Appreciation Language?** \_\_\_\_\_

**What are my teammates Appreciation Languages?**


- d. **Sanctuary Supervision:** Once per month, the Colorado OPG Director will meet individually with Colorado OPG employees for Sanctuary Supervision. The purpose of Sanctuary Supervision is to establish a safe place for Colorado OPG employees to express any difficulties, frustrations, or anxieties related to job performance, caseload, client interactions, etc. Sanctuary Supervision is a safe place for Public

Guardians to share without consequences or judgment. The Colorado OPG Director provides this space as a form of self-care for Public Guardians.

- a. A Colorado OPG employee may request Sanctuary at any point in time and the Colorado OPG Director will provide Sanctuary Supervision.
- e. **Critical Incident Debriefing:** The Colorado OPG Director provides a process for mitigating severe stress and enhancing psychological resilience among Colorado OPG employees. A Critical Incident is identified in Policy 6.13. Upon the occurrence of a Critical Incident, the Colorado OPG Director will initially provide Critical Incident Debriefing with the involved employee. At the Colorado OPG Director's discretion, the Director may provide a Critical Incident Team Debriefing with all employees.
  - a. A Colorado OPG employee may request a Critical Incident Team Debriefing at any point in time and the Colorado OPG Director will provide individual or team debriefing.
  - b. Reference to prior trainings, self-care topics, etc. will be included in this process.
  - c. At the Colorado OPG Director's discretion, additional training may be provided or recommended.
- f. **Staff Shout Outs:** The Colorado Office of Public Guardianship will provide a space for employees to visually recognize achievements, praise, and thanks for team members.

g. **Tools and Resources**

- Mindful: [www.mindful.org](http://www.mindful.org)
- Mental Health First Aid Colorado: <http://www.mhfaco.org/>
- Compassion Fatigue:

[www.compassionfatigue.ca](http://www.compassionfatigue.ca)

[www.compassionfatigue.org](http://www.compassionfatigue.org)