

MINIMUM STANDARDS FOR GUARDIANSHIP SERVICES

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MINIMUM STANDARDS FOR THE PROVISION OF GUARDIANSHIP SERVICES

Preamble

The purpose of these Minimum Standards for the Provision of Guardianship Services (Minimum Standards) is to protect the interests of incapacitated persons in Texas by ensuring that certified guardians and guardianship programs provide guardianship services in a professional and competent manner. These standards are promulgated by the Texas Guardianship Certification Board (Board) and the Texas Supreme Court pursuant to Section 111.041 of the Texas Government Code.

The National Guardianship Association (NGA) Standards of Practice were of great assistance in the development of these Minimum Standards, and the organization and form of the Minimum Standards generally follows that of the NGA Standards of Practice. For some standards and definitions, the Board adopted different language in the Minimum Standards to be consistent with Texas law and Texas experience. For example, NGA Standard 6 on Informed Consent and Standard 14 on Decision Making About Medical Treatment have been substantially modified, and NGA Standard 15 on Decision Making About Withholding and Withdrawal of Medical Treatment has been abbreviated and incorporated within Minimum Standard 14. The NGA Standards of Practice are available at <http://www.guardianship.org>. Pursuant to Section 531.124(b) of the Texas Government Code, the Guardianship Advisory Board reviewed and commented on the Minimum Standards.

Standard 1

Applicability

These Minimum Standards apply to the provision of guardianship services by certified guardians, guardianship programs, and the Texas Department of Aging and Disability Services.

Standard 2

Relationship with the Court

- I. Guardianships are established through a legal process and are subject to the supervision of the Court.
- II. The guardianship court order determines the authority and the limitations of the guardian.
- III. The guardian shall know the extent of the powers granted by the Court and shall not act beyond those powers.
- IV. The guardian shall clarify with the Court any questions about the meaning of the order or directions from the Court before taking action based on the order or directions.
- V. The guardian shall obtain court authorization for actions that are subject to court approval.
- VI. The guardian shall submit reports regarding the status of the guardianship to the Court as ordered by the Court or required by the Texas Probate Code, but not less often than annually.

- VII. All payments to the guardian from the assets of the ward shall follow applicable federal or Texas statutes, rules, and requirements and are subject to review by the Court.

Standard 3

Relationship with the Ward

- I. The guardian shall maintain a professional relationship with the ward, the ward's family, and the ward's friends.
- II. The guardian may not engage in sexual relations with a ward.

Standard 4

Relationship with Family Members and Friends of the Ward

- I. The guardian shall recognize the value of family and friends to the quality of life of the ward. The guardian shall encourage and support the ward in maintaining contact with family members and friends when doing so benefits the ward.
- II. The guardian shall assist the ward in maintaining or reestablishing relationships with family and friends, except when doing so would not be of benefit to the ward.
- III. When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval and in compliance with the Texas Probate Code, to obtain assets (particularly those with sentimental value).
- IV. The guardian shall make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward. Subject to court approval, the present needs of a ward, if not covered by other property, may have priority over preservation of designated property.
- V. The guardian may maintain communication with the ward's family and friends regarding significant occurrences that affect the ward when that communication would benefit the ward.
- VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the ward. The guardian may request and consider family input when making medical decisions.

Standard 5

Relationship with Other Professionals and Providers of Service to the Ward

- I. The guardian shall treat all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the ward.
- II. The guardian shall develop and stay current with the services, providers, facilities, and community resources to ensure that the ward receives high-quality services from the most appropriate provider.

- III. The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. A guardian shall not provide direct services to the ward for compensation unless a written contract approved by the court authorizes the provision of such services.
- IV. The guardian shall engage the services of professionals (such as attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward and in compliance with the Texas Probate Code.

Standard 6

Informed Consent

- I. The guardian shall enable the ward to exercise the ward's right to make informed consent decisions to the greatest extent of the ward's capacity and ability.
- II. The guardian, standing in the place of the ward who lacks capacity, shall access the same information that would have been given to the ward if the ward had capacity in order to make informed substituted judgments on behalf of the ward.
- III. The guardian shall make a good faith effort to determine whether the ward has previously stated any preferences before making any decisions on the ward's behalf and then follow these preferences unless doing so would adversely affect the ward or the ward's estate.
- IV. The guardian may make decisions that are contrary to the known preferences of the ward when following the wishes of the ward would adversely affect the ward.

Standard 7

Standards for Decision-Making

- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent.
- II. **SUBSTITUTED JUDGMENT**
 - A. Substituted Judgment is the principle of decision-making that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the ward would have made when competent.
 - B. Substituted Judgment promotes the underlying values of self-determination and well-being of the ward.
 - C. Substituted Judgment is not used when following the ward's wishes would cause substantial harm to the ward or when the guardian cannot establish the ward's prior wishes.
- III. **BEST INTEREST OF THE WARD**
 - A. Best Interest is the standard of decision-making the guardian should use when the ward has never had capacity or when the ward's wishes cannot be determined.

- B. The Best Interest standard requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the ward.
- C. The Best Interest standard is used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.
- D. Best Interest decisions include consideration of the ward's current and previously expressed wishes.

Standard 8

Least Restrictive Alternative

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the needs of the ward while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the ward and maintaining the ward's protection and safety.
- III. The following guidelines apply in the determination of the least restrictive alternative:
 - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
 - B. The guardian shall make a good faith effort to know the ward's preferences.
 - C. The guardian shall consider assessments of the ward's needs as determined by specialists. This may include an independent assessment of the ward's functional ability, the ward's health status, and the ward's care needs.

Standard 9

Self-Determination of the Ward

- I. The guardian shall provide the ward with every opportunity to exercise those rights that the ward might be capable of exercising as they relate to the care of the ward's person.
- II. The guardian shall encourage the development or maintenance of maximum self-reliance and independence of the ward.
- III. The guardian shall advocate for individualized planning and the least restrictive alternative on behalf of the ward.

Standard 10

Duties Regarding Diversity and Personal Preference of the Ward

The guardian shall make a good faith effort to determine the extent to which the ward identifies with particular ethnic, religious, gender, cultural, and personal values and to make decisions consistent with these values in the best interest of the ward.

Standard 11

Confidentiality

- I. Subject to state and federal law, the guardian shall keep the affairs of the ward confidential.
- II. The guardian shall respect the ward's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed in the best interest of the ward.

Standard 12

Duties of the Guardian of the Person

The guardian of the person shall have the following duties and obligations to the ward unless the order of appointment provides otherwise:

- A. To see that the ward is living in the most appropriate environment that addresses the ward's wishes and needs.
 1. The guardian shall authorize moving a ward to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the ward, and serves the overall best interest of the ward.
 2. When the guardian considers involuntary or long-term placement of the ward in an institutional setting, the bases of the decision shall be to minimize the risk of substantial harm to the ward, to obtain the most appropriate placement possible, and to secure the best treatment for the ward.
- B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the ward.
- C. To make reasonable efforts to secure for the ward medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the ward's potential for self-reliance and independence.
- D. To seek specific judicial authority when the dissolution of a marriage or another extraordinary circumstance is being addressed.
- E. To file with the Court, on a timely basis but not less often than annually, all reports required by the Texas Probate Code or as ordered by the Court.

- F. To petition the Court for modification or termination of the guardianship when the ward's capacity is partially or completely restored.

Standard 13

Guardian of the Person: Initial and Ongoing Responsibilities

- I. After appointment, the guardian shall:
 - A. Address all issues of the ward that require immediate action.
 - B. Meet with the ward as soon after the appointment as is feasible. At the first meeting, to the extent possible given the ward's capacity to comprehend and communicate, the guardian shall:
 - 1. Communicate to the ward the role of the guardian;
 - 2. Explain the rights retained by the ward;
 - 3. Assess the ward's physical and social situation, the ward's educational, vocational, and recreational needs, the ward's preferences, and the support systems available to the ward; and
 - 4. Attempt to gather any missing necessary information regarding the ward.
 - C. Notify relevant agencies and individuals of the appointment of a guardian and complete the intake process by documenting:
 - 1. Physician's evaluation.
 - 2. Psychological or neuropsychological evaluation, if appropriate
 - 3. An inventory of advance directives: Such statements of intent would include, but are not limited to, powers of attorney, living wills, and organ donation statements.
- II. The guardian shall obtain all public benefits for which the ward is eligible.
- III. The guardian shall establish and maintain contact with the guardian of the estate or other fiduciary of the ward, where appropriate.
- IV. The guardian shall develop and monitor a written guardianship plan setting forth short-term and long-term goals for meeting the ward's needs that are addressed in the guardianship order.
 - A. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward.
 - B. The plan must also address whether the ward's finances and budget are in line with the services the ward needs and are flexible enough to deal with the changing status of the ward.

- C. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
 - D. The plan must be based on a multidisciplinary functional assessment.
 - E. The plan must be updated no less often than annually.
- V. The guardian shall maintain a separate file for each ward. The file must include, at a minimum, the following information and documents:
- A. The ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
 - B. All legal documents involving the ward;
 - C. Advance directives;
 - D. A list of key contacts;
 - E. A list of service providers, contact information, a description of services provided to the ward, and progress/status reports;
 - F. A list of all over-the-counter and prescribed medication the ward is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication;
 - G. Documentation of all ward and collateral contacts, including the date, time, and activity;
 - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward;
 - I. The guardianship plan;
 - J. An inventory, if required;
 - K. Assessments regarding the ward's past and present medical, psychological, and social functioning;
 - L. Documentation of the ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
 - M. A photograph of the ward.
- VI. The guardian shall visit the ward consistent with the requirements of A through F below and in compliance with the Court's order, but not less often than monthly.
- A. The guardian shall assess the ward's physical appearance and condition and assess the appropriateness of the ward's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological,

educational, direct services, and health and personal care needs as well as the need for any additional services.

- B. The guardian shall maintain substantive communication with service providers, caregivers, court visitors, and others attending to the ward.
- C. The guardian shall make a good faith effort to participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the ward.
- D. The guardian shall require that each service provider develop an appropriate service plan for the ward and must take appropriate action to ensure that the service plans are being implemented.
- E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the ward at the place of residence and at any program site to ascertain that the care plan is being properly followed.
- F. The guardian shall advocate on behalf of the ward with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the ward, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.

Standard 14

Decision-Making About Medical Treatment

- I. The guardian shall promote, monitor, and maintain the ward's health and well-being.
- II. The guardian shall ensure that all reasonably available medical care necessary for the ward is provided.
- III. The guardian shall make a good faith effort to determine whether the ward, before becoming incapacitated, executed any advance directives, such as a living will, a durable power of attorney, or any other specific written or oral declaration of intent. On finding such documents, the guardian shall consider the ward's wishes in the decision-making process.
- IV. The guardian shall make decisions about withholding or withdrawing medical treatment in accordance with the above provisions unless restricted by the order appointing the guardian.
- V. Subject to available local and financial resources, the guardian shall explore treatment options in medical interventions posing a significant risk to the ward.

Standard 15

Conflict of Interest: Ancillary and Support Services

- I. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the

guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward.

- II. Unless authorized by court order, the guardian, other than the Department of Aging and Disability Services and guardianship programs, shall not directly provide housing, medical, or other direct services to the ward.
 - A. The guardian shall coordinate and assure the provision of all necessary services to the ward rather than providing those services directly.
 - B. To ensure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian shall be independent from all service providers.
- III. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the Court.
- IV. The guardian shall not solicit or accept incentives from service providers.
- V. The guardian shall consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.

Standard 16

Duties of the Guardian of the Estate

- I. The guardian of the estate shall maintain and manage the ward's estate as a prudent person would manage the person's own property consistent with a fiduciary's duties and responsibilities set forth in the Texas Probate Code.
- II. The guardian shall supervise all income and disbursements of the estate in accordance with the Texas Probate Code.
- III. The guardian shall manage the estate only for the benefit of the ward.
- IV. The guardian shall safeguard estate assets by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- V. The guardian shall keep estate money separate from the guardian's personal money.
- VI. The guardian shall keep the money of individual estates separate.
- VII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the ward and shall defend against actions that would result in a loss of estate assets in compliance with the Texas Probate Code.
- VIII. The guardian shall employ prudent accounting procedures when managing the estate.

- IX. The guardian shall determine if a will exists and, for estate planning purposes only, may request that a copy be provided to the Court for in camera inspection under Section 865A of the Texas Probate Code.
- X. The guardian shall manage the estate as a prudent person would manage the person's own property and in compliance with the Texas Probate Code.

Standard 17

Guardian of the Estate: Initial and Ongoing Responsibilities

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
 - B. The guardian shall meet with the ward as soon after the appointment as feasible. At the first meeting the guardian shall:
 - 1. Communicate to the ward the role of the guardian;
 - 2. Outline the rights retained by the ward and the grievance procedures available;
 - 3. Assess the previously and currently expressed wishes of the ward and evaluate them based on current acuity; and
 - 4. Attempt to gather from the ward any necessary information regarding the estate.
- II. The guardian shall prepare a financial plan and budget that correspond with the care plan for the ward. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the ward.
- III. The guardian shall post and maintain a bond with surety sufficient for the protection of the estate unless the guardian is exempt from bond by law.
- IV. The guardian shall obtain all public benefits for which the ward is eligible.
- V. The guardian must thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VI. The guardian must prepare an inventory of the ward's property in compliance with the Texas Probate Code and as otherwise ordered by the Court.
- VII. All accountings shall contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period in compliance with the Texas Probate Code and as otherwise ordered by the Court. All accountings must be complete, accurate, and understandable.
- VIII. The guardian shall oversee the disposition of the ward's assets to qualify the ward for any public benefits program.

- IX. On the termination of the guardianship or the death of the ward, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the Court.
- X. The guardian shall monitor the personal trust account of the institution-based ward.
- XI. The guardian shall, when appropriate, open a burial account and make funeral arrangements for the ward.

Standard 18

Property Management

- I. The guardian may not sell, encumber, convey, or otherwise transfer property of the ward, or an interest in that property, without judicial authority.
- II. The guardian shall obtain an independent appraisal of real and personal property whenever ordered by the Court.
- III. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

Standard 19

Conflict of Interest: Estate, Financial, and Business Services

- I. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that might be perceived as self-serving or adverse to the position or best interest of the ward. Governmental entities and guardianship programs providing multiple services shall maintain an arm's-length relationship between those services.
- II. The guardian shall not commingle personal or program funds with the funds of the ward.
- III. The guardian shall not sell, encumber, convey, or otherwise transfer the ward's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
- IV. The guardian shall not sell or otherwise convey to the ward property from any of the parties noted above.
- V. The guardian shall not loan, give, or use the ward's income or assets to support or benefit other individuals directly or indirectly unless specific prior court approval is obtained.
- VI. The guardian shall not borrow funds from, or lend funds to, the ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the Court.

VII. The guardian shall not profit from any transactions made on behalf of the ward's estate at the expense of the estate, nor shall the guardian compete with the estate, unless authorized to do so by the Court.

Standard 20

Modification and Termination of the Guardianship

The guardian may seek modification or termination of the guardianship in the following circumstances pursuant to the Texas Probate Code:

- A. When it appears that the ward has developed or regained capacity in areas in which he or she was found incapacitated by the Court.
- B. When less restrictive alternatives exist.
- C. When the ward expresses the desire to challenge the necessity of all or part of the guardianship.
- D. When the ward has died.

Standard 21

Management of Multiple Guardianship Cases

The guardian shall limit the guardianship caseload to a size that allows the guardian to accurately and adequately provide care, supervise, and protect each ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.

Standard 22

Quality Assurance

The guardian shall make a good faith effort to provide quality in the services the guardian delivers and to develop a quality assurance program to that end.

Definitions

ADVANCE DIRECTIVE – Has the meaning assigned by Section 166.002 of the Texas Health and Safety Code.

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

BEST INTEREST - The course of action taken to maximize what is best for a ward. It includes consideration of the least intrusive, most normalizing, and least restrictive alternative possible given the needs and limitations of the ward.

CONFLICT OF INTEREST - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another.

CORPORATE FIDUCIARY - Has the meaning assigned by Section 601 of the Texas Probate Code.

COURT OR PROBATE COURT - Has the meaning assigned by Section 601 of the Texas Probate Code.

DIRECT SERVICES - Services on behalf of a ward, including medical and nursing care, respite and hospice care, case management, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

ESTATE - Has the meaning assigned by Section 601 of the Texas Probate Code.

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

FUNCTIONAL ASSESSMENT - A procedure to measure and document on multiple dimensions the functional capacity, including the ability to fully understand and make decisions, to plan and undertake courses of action, and to evaluate the outcome of such courses of action, and the general well-being of an individual.

GUARDIAN – Has the meaning assigned by Section 601. For the purpose of these Minimum Standards, the term also includes Certified Guardians.

Certified Guardian – A person who is certified to provide guardianship services in this state by the Guardianship Certification Board.

Engaged in the business of providing guardianship services – To perform, offer to perform, or advertise the performance of guardianship services for compensation.

Guardian of the Estate - A person or entity appointed by the Court who has the powers and duties listed in Section 768 of the Texas Probate Code or as ordered by the Court.

Guardian of the Person - A person or entity appointed by the Court who has the powers and duties listed in Section 767 of the Texas Probate Code or as ordered by the Court.

Guardianship Program – A local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

Guardianship Services -- Conducting, performing, or administering such duties or powers as prescribed by the Texas Probate Code or under a court order in a guardianship matter.

Private Professional Guardian - A person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

INCAPACITATED PERSON - Has the meaning assigned by Section 601 of the Texas Probate Code.

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

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

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

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

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

WARD - Has the meaning assigned by Section 601 of the Texas Probate Code.