



**National Guardianship Association**

# **STANDARDS OF PRACTICE**



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# ***National Guardianship Association***

## ***Standards of Practice***

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## Preamble

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

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

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

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

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

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

In this work we have drawn on a number of collective sources. First and foremost have been NGA members who have contributed extensive time and energy and valuable input into the development of these standards. The *Model Code of Ethics for Guardians*, developed by Michael D. Casasanto, Mitchell Simon, and Judith Roman and adopted by the NGA, has formed the foundation from which the standards were developed. Other very important sources that

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helped in the creation of our standards of practice are the U.S. Administration on Aging, the AARP, the Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, Washington, California, Illinois, Minnesota, and Michigan. We thank everyone listed above and others for their ongoing commitment to the profession of guardianship.

NOTE: The Standards of Practice were first adopted by the NGA Board of Directors and ratified by the membership in 2000.

The 2003 edition of the *NGA Standards of Practice for Guardians* incorporates language that came forth from Wingspan 2001, the National Conference on Guardianship Reform. The NGA Ethics and Standards Committee is proud to announce that the *NGA Standards of Practice for Guardians* have been acknowledged by this national group of guardianship experts and are being endorsed as the model standards to be followed by all guardians in the United States. Please be advised that any state adopting these standards should give attribution to NGA.

The 2007 Edition provides minor clarification of the language in the earlier editions without any changes in content.

Please see the NGA Website ([www.guardianship.org](http://www.guardianship.org)) for the most current edition of NGA Standards of Practice.

## **NGA Standards of Practice**

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### **NGA Standard 1 - Applicable Law**

The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.

### **NGA Standard 2 - The Guardian's Relationship to 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 must obtain court authorization for actions that are subject to court approval.
- VI. The guardian must submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but not less often than annually.
- VII. All payments to the guardian from the assets of the ward shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.

### **NGA Standard 3 - The Guardian's Professional Relationship with the Ward**

- I. The guardian shall avoid personal relationships with the ward, the ward's family, or the ward's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
- II. The guardian may not engage in sexual relations with a ward unless the guardian is the ward's spouse or a physical relationship existed before the appointment of the guardian.

### **NGA Standard 4 - The Guardian's 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 must assist the ward in maintaining or reestablishing relationships with family and friends, except when doing so would not be of benefit to the ward.

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- III. When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).
- IV. The guardian must make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward.
- 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.

Note: Please refer to Standard 11 as it relates to confidentiality issues.

**NGA Standard 5 - The Guardian's Relationship with Other Professionals and Providers of Service to the 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 maintain a working knowledge of the services, providers, and facilities available in the community.
- III. The guardian must stay current with changes in community resources to ensure that the ward receives high-quality services from the most appropriate provider.
- IV. A guardian who is not a family member guardian shall not provide direct service to the ward. The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment.
- V. The guardian shall engage the services of professionals (attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward.

**NGA Standard 6 - Informed Consent**

- I. Decisions the guardian makes on behalf of the ward shall be based on the principle of Informed Consent.
- II. Informed Consent is a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
- III. Informed Consent is based on complete information regarding:
  - A. Adequate information on the issue;
  - B. Voluntary action; and
  - C. Lack of coercion.

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- IV. The guardian stands in the place of the ward and is entitled to the same information and freedom of choice as the ward would have received if he or she were competent.
- V. In evaluating each requested decision, the guardian shall do the following:
  - A. Have a clear understanding of the issue for which informed consent is being sought.
  - B. Determine the conditions that necessitate treatment or action.
  - C. Advise the ward of the decision that is required and determine, to the extent possible, the ward's current preferences.
  - D. Determine whether the ward has previously stated preferences in regard to a decision of this nature.
  - E. Determine the expected outcome of each alternative.
  - F. Determine the benefit of each alternative.
  - G. Determine the risks of each alternative.
  - H. Determine why this decision needs to be made now rather than later.
  - I. Determine what will happen if a decision is made to take no action.
  - J. Determine what the least restrictive alternative is for the situation.
  - K. Obtain a second medical opinion, if necessary.
  - L. Obtain information or input from family and from other professionals.
  - M. Obtain written documentation of all reports relevant to each decision.

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

- I. Each decision made by the guardian shall be an informed decision based on the principle of A Informed Consent. (see Standard 6).
- 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 INTERESTS 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.

**NGA Standard 8 - Least Restrictive Alternative**

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the 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 guardian shall make individualized decisions; the least restrictive alternative for one ward might not be the least restrictive alternative for another ward.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
  - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
  - B. The guardian shall strive to know the 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.

**NGA Standard 9 - Self-Determination of the Ward**

- I. The guardian shall provide the ward with every opportunity to exercise those individual rights that the ward might be capable of exercising as they relate to the care of the ward's person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the ward.
- III. The guardian shall understand and advocate for person-centered planning and the least restrictive alternative on behalf of the ward.



- IV. The guardian shall encourage the ward to participate, to the maximum extent of the ward's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the ward is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

**NGA Standard 10 - The Guardian's Duties Regarding Diversity and Personal Preference of the Ward**

- I. Ethnic, religious, and cultural values:
- A. The guardian shall determine the extent to which the ward identifies with particular ethnic, religious, and cultural values.
  - B. To determine these values, the guardian shall also consider the following:
    - 1. The ward's attitudes regarding illness, pain, and suffering.
    - 2. The ward's attitudes regarding death and dying.
    - 3. The ward's views regarding quality of life issues.
    - 4. The ward's views regarding societal roles and relationships.
    - 5. The ward's attitudes regarding funeral and burial customs.
- II. Sexual expression:
- A. The guardian shall acknowledge the ward's right to interpersonal relationships and sexual expression. The guardian must take steps to ensure that a ward's sexual expression is consensual, that the ward is not victimized, and that an environment conducive to this expression in privacy is provided.
  - B. The guardian shall ensure that the ward has information about and access to accommodations necessary to permit sexual expression to the extent the ward desires and to the extent the ward possesses the capacity to consent to the specific activity.
  - C. The guardian shall take reasonable measures to protect the health and well-being of the ward.
  - D. The guardian shall ensure that the ward is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the ward the level of protection appropriate to the ward's lifestyle and ability, while considering the preferences of the ward. The guardian shall encourage the ward, where possible and appropriate, to participate in the choice of a birth control method.
  - E. The guardian shall protect the rights of the ward with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the ward's values and customs.

**NGA Standard 11 – Confidentiality**

- I. 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.
- IV. The guardian may disclose or assist the ward in communicating sensitive information to the ward's family when the disclosure would benefit the ward.
- V. The guardian may refuse to disclose sensitive information about the ward where disclosure would be detrimental to the well-being of the ward or would subject the ward's estate to undue risk. Such a refusal to disclose information must be reported to the court.

**NGA Standard 12 - Duties of the Guardian of the Person**

The guardian 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 keep the affairs of the ward confidential, except when it is necessary to disclose such affairs for the best interests of the ward.
- E. To seek specific judicial authority when a civil commitment, the dissolution of a marriage, or another extraordinary circumstance is being addressed.
- F. To file with the court, on a timely basis but not less often than annually, all reports required by state statute, regulations, court rule, or the particular court pursuant to whose authority the guardian was appointed.

- G. To adhere to the requirements of Standard 17 - Duties of the Guardian of the Estate and Standard 18 - Guardian of the Estate: Initial and Ongoing Responsibilities, to the extent that the guardian of the person has been authorized by the court to manage the ward's property.
- H. To petition the court for limitation or termination of the guardianship when the ward no longer meets the standard pursuant to which the guardianship was imposed, or when there is an effective alternative available.

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

- I. With the proper authority, initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the ward that require immediate action.
  - B. The guardian shall meet with the ward as soon after the appointment as is feasible. At the first meeting, 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. After the first meeting with the ward, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate.
    - 1. Physician's evaluation: If a comprehensive medical evaluation was not completed as part of the petitioning process, or has not been done within the past year, the guardian should obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate specialist.
    - 2. Psychological evaluation, if appropriate.
    - 3. An inventory of advanced directives: Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements in medical charts.
- II. The guardian shall establish contact with and develop a regular pattern of communication with the guardian of the estate or other fiduciary for the ward, if such a person exists.
- III. The guardian shall develop and monitor a written guardianship plan setting for 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 if those needs exist.

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- 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.
- IV. 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 client and collateral contacts, including the date, time, and activity;
  - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the 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.

- V. The guardian shall visit the ward no less 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 must maintain substantive communication with service providers, caregivers, and others attending to the ward.
  - C. The guardian must 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.

**NGA 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 medical care necessary for the ward is appropriately provided.
- III. The guardian shall determine whether the ward, before the appointment of a guardian, 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. The guardian shall inform the court and other interested parties of the existing documents.
- IV. Absent an emergency or the execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the ward's wishes with respect to medical intervention, a guardian who has proper authority may not grant or deny authorization for medical intervention until he or she has given careful consideration to the criteria listed in Standard 6 - Informed Consent and Standard 7 - Standards for Decision-Making.
- V. In the event of an emergency, a guardian who has proper authority shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7, within the time allotted by the emergency.

- VI. 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 ward. The guardian shall obtain a second opinion from an independent physician.
- VII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.
- VIII. The guardian may speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- IX. The guardian shall not authorize extraordinary procedures without prior authorization from the court unless the ward has executed a living will or durable power of attorney that clearly indicates the ward'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
  - E. Electroshock therapy

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

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

**NGA Standard 16 - 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. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
- A. The guardian shall not directly provide housing, medical, legal, or other direct services to a ward. Some direct services may be approved by the court for family guardians.
    - 1. The guardian shall coordinate and assure the provision of all necessary services to the ward rather than providing those services directly.
    - 2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the ward.
    - 3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the ward. Reasons for the exception must be documented and the court notified.
  - B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
  - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
  - D. The guardian shall not be in a position of representing both the ward and the service provider.
  - E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
  - F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the ward.
  - G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
  - H. The guardian shall neither solicit nor accept incentives from service providers.
  - I. The guardian shall consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.
  - J. A guardian who is an attorney or employs attorneys may provide legal services to a ward only when doing so best meets the needs of the ward and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.

**NGA Standard 17 - Duties of the Guardian of the Estate**

- I. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- II. The guardian shall provide competent management of the ward's property and shall supervise all income and disbursements of the estate.
- III. The guardian shall manage the estate only for the benefit of the ward.
- IV. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- V. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.
- VI. 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.
- VII. The guardian shall employ prudent accounting procedures when managing the estate.
- VIII. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.
- IX. The guardian shall apply the Prudent Person Rule and the Prudent Investor Rule when managing the estate.

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

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
  - 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.
- IV. The guardian shall obtain all public and insurance benefits for which the ward is eligible.
- V. The guardian may allow the ward the opportunity to manage funds to his or her ability.
- VI. The guardian must thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VII. The guardian must prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the ward with their values on the date the guardian was appointed and must be independently verified.
- VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.
- IX. The guardian shall oversee the disposition of the ward's assets to qualify the ward for any public benefits program.
- X. 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.
- XI. The guardian may monitor or manage the personal allowance of the institution-based ward.
- XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the ward.

#### **NGA Standard 19 - Property Management**

- I. The guardian may not dispose of real or personal property of the ward without judicial, administrative, or other independent review.
- II. In the absence of reliable evidence of the ward's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the ward, or an interest in that property, unless doing so is in the best interest of the ward.
- III. In considering whether it is in the best interest of the ward to dispose of the ward's property, the guardian shall consider the following:
  - A. Whether disposing of the property will benefit or improve the life of the ward.
  - B. The likelihood that the ward will need or benefit from the property in the future.
  - C. The previously expressed or current desires of the ward with regard to the property.
  - D. The provisions of the ward's estate plan as it relates to the property, if any.

- E. The tax consequences of the transaction.
  - F. The impact of the transaction on the ward's entitlement to public benefits.
  - G. The condition of the entire estate.
  - H. The ability of the ward to maintain the property.
  - I. The availability and appropriateness of alternatives to the disposition of the property.
  - J. The likelihood that property may deteriorate or be subject to waste.
  - K. The benefits versus the liability and costs of maintaining the property.
- IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.
- V. The guardian must provide for insurance coverage, as appropriate, for property in the estate.

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

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.

Rules relating to specific situations that might create an impropriety or conflict of interest include the following:

1. The guardian shall not commingle personal or program funds with the funds of the ward, except as follows:
  - a. This standard does not prohibit the guardian from consolidating and maintaining a ward's funds in joint accounts with the funds of other wards.
  - b. If the guardian maintains joint accounts, separate and complete accounting of each ward's funds shall also be maintained by the guardian.
  - c. When an individual or organization serves several wards, it may be more efficient and more cost-effective to pool the individual wards' funds in a single account. In this manner, banking fees and costs are distributed among the individual wards, rather than being borne by each separately.
  - d. If the court allows the use of combined accounts, they should be permitted only where the guardian or conservator has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges, attributable to each individual ward based on the asset level of the ward.
2. The guardian may 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.

3. The guardian may not sell or otherwise convey to the ward property from any of the parties noted above.
4. The guardian may not loan or give money or objects of worth from the ward's estate unless specific prior approval is obtained.
5. The guardian may not use the ward's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained and a reasonable showing is made that such support is not detrimental to the best interests of the ward.
6. The guardian may 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 or agency administering the ward's benefits, and the transaction is approved by the court.
7. The guardian may not profit from any transactions made on behalf of the ward's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

#### **NGA Standard 21 - Termination and Limitation of the Guardianship/Conservatorship**

- I. Limited guardianship of the person and estate is preferred over a plenary guardianship.
- II. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
  - A. When 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.
  - E. When the guardianship no longer benefits the ward.

#### **NGA Standard 22 - Guardianship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the ward's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. Factors to be considered in determining reasonableness of the guardian's fees include:
  - A. Powers and responsibilities under the court appointment;

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- B. Necessity of the services;
  - C. Time required;
  - D. Degree of difficulty;
  - E. Skill and experience required to carry out the duty;
  - F. Needs of the ward; and
  - G. Costs of alternatives.
- V. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:
- A. Date and time spent on a task;
  - B. Duty performed;
  - C. Expenses incurred;
  - D. Collateral contacts involved; and
  - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).

### **NGA Standard 23 - Management of Multiple Guardianship Cases**

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

### **NGA Standard 24 - Quality Assurance**

- I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.
- II. The independent review shall occur periodically, but no less often than every two years, and must include a review of a representative sample of cases.

- III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the ward and with the individual providing direct service to the ward.
- IV. An independent review may be obtained from:
  - A. A court monitoring system;
  - B. An independent peer; or
  - C. An CGC master guardian.
- V. The quality assurance review does not replace other monitoring requirements established by the court.

**NGA Standard 25 - Sale or Purchase of a Guardianship Practice**

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

- I. The fees charged to existing wards shall not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.
  
- IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice shall not be considered a sale or purchase under this standard.

## Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GUARDIAN** - An individual or organization named by order of the court to exercise any or all powers and rights of the person and/or the estate of an individual. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

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

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

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

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

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

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

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

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

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

**INCAPACITATED PERSON** - Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions.

**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.

**PRUDENT PERSON RULE** - An investment standard that considers the reasonableness of an investment based on whether a prudent person of discretion and intelligence, who is seeking reasonable income and preservation of capital, would make that investment.

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

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

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

**SUBSTITUTED JUDGMENT** - The principle of decision-making that requires implementation of the course of action that comports with the individual 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** - A person for whom a guardian has been appointed. Synonyms include *Conservatee*, *Disabled Person*, *Protected Person*, and *Incapacitated Person*.



## NGA and CGC Qualifications for Court-Appointed Guardians

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

Guidelines:

A corporate guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become registered guardians and master guardians.

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

Guidelines:

A family guardian:

1. Is encouraged to recognize the resources available through the NGA.
2. Shall follow the *Model Code of Ethics for Guardians*.
3. Shall follow the *NGA Standards of Practice* when carrying out guardianship responsibilities.

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

Guidelines:

An individual professional guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to become a registered guardian and master guardian, if applicable.

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

Guidelines:

Master guardian qualifications as established by the Center for Guardianship Certification:

1. Must be a registered guardian in good standing when submitting an application.
2. Must have:
  - a. a graduate degree from an accredited college or university, with three years of full-time professional guardianship experience; or
  - b. a bachelor's degree from an accredited college or university (to include a registered nurse) with five years of full-time professional guardianship experience; or
  - c. 12 years of full-time professional guardianship experience.
3. A completed application must include:
  - a. an application form;
  - b. four professional references;

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- c. proof of employment and education; and
- d. a signed affidavit stating the number of years of guardianship and number of wards served.
4. "Professional guardianship experience" is defined to include:
  - a. serving in a position of making decisions serving as court-appointed guardian or as agent for a court-appointed guardian providing guardianship service directly to or on behalf of two or more unrelated wards; and
  - b. spending an average of at least 16 hours per week practicing guardianship during at least three of the last five years, including the most recent year.
5. A master guardian must have a high degree of competence in managing complex issues and must demonstrate experience in at least five of the following:
  - a. Manage significant financial estates.
  - b. Conduct or arrange for comprehensive assessment of ward's needs.
  - c. Provide consultation on a wide range of guardianship issues.
  - d. Provide supervision to staff in a guardianship program.
  - e. Plan, implement, control, direct, and fund a professional guardianship program.
  - f. Provide case oversight for less experienced guardians.
  - g. Have experience with more than one disability group.
  - h. Provide training and supervision and mentoring to less experienced guardians.
  - i. Be a professional education presenter on guardianship-related topics.
  - j. Provide consultation regarding medical procedures, use of psychotropic medications, and evaluation of behavioral programs.
  - k. Advance the profession through policy development, legislative advocacy, or community outreach.
  - l. Provide consultation or make decisions on end-of-life issues and other complex or controversial issues.
  - m. Actively advocate for limited guardianship, alternatives to guardianship, and restoration of wards' rights.
6. Must successfully complete the master guardian examination administered by the Center for Guardianship Certification.
7. Shall follow the *Model Code of Ethics for Guardians*.
8. Shall follow the *NGA Standards of Practice*.

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

### Guidelines:

A public guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become registered guardians and master guardians.

**Registered Guardian** - A registered guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

Registered guardian qualifications as established by the Center for Guardianship Certification:

1. Must be at least 21 years of age.
2. Must be a high school graduate or possess the GED equivalent.
3. Must have one year of relevant work experience related to guardianship or conservatorship or must satisfy the following education or training requirements:
  - a. a degree from an accredited college; the degree must be in a field related to guardianship; or
  - b. completion of a course curriculum or training specifically related to guardianship or conservatorship approved by the National Guardianship Foundation.
4. Must attest that he or she has not been convicted of or pled guilty or no contest to a felony.
5. Must attest that he or she has not been civilly or criminally liable for an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion.
6. Must attest that he or she has not been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion.
7. Must attest that he or she is bonded in accordance with state statutes.
8. Must attest that an insurance or bonding agent has not found him or her liable in a subrogation action.
9. Must successfully complete an examination administered by the Center for Guardianship Certification
10. Shall follow the *Model Code of Ethics for Guardians*.
11. Shall follow the *NGA Standards of Practice*.
12. Should strive to become a master guardian.

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

Guidelines:

A volunteer guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Is encouraged to become a registered guardian and master guardian, if applicable.