

National Guardianship Association

STANDARDS OF PRACTICE

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PREAMBLE

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

In July of 1991, the National Guardianship Association 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 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 was “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 National Guardianship Association

has, therefore, adopted standards that we feel reflect as realistically as possible the best or highest quality of practice. Best practice may go beyond what a state law requires of a guardian.

In reading this document, it is important to recognize that some of the standards will 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 the current state law governing guardianships and certification of guardians.

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.

In this work we have drawn on a number of collective sources. First and foremost has been our own membership who have contributed extensive time, 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 National Guardianship Association, has formed the foundation from which the standards have been developed. Other very important sources that helped in the creation of our standards of practice are the US Administration on Aging, the American Association of Retired Persons, 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 here and others for their ongoing commitment to the profession of guardianship.

NGA Standard No: 1 – Applicable Law

The guardian shall perform duties and discharge obligations in accordance with the current state and federal law governing guardianships and certification of guardians, if certification is required in the state in which the guardian is appointed. In all guardianships the guardian shall comply with the requirements of the Court that made the appointment.

NGA Standard No: 2 – The Guardian's Relationship to the Court

- A. Guardianships are established through a legal process and are subject to the supervision of the Court.
- B. The guardianship court order determines the authority and the limitations of the guardian.
- C. The guardian must know the extent of the powers granted by the Court and shall not act beyond those powers.
- D. Any questions about the meaning of the order or directions from the Court will be clarified with the Court before taking action based on the order.
- E. The guardian is responsible for obtaining Court authorization for actions that are subject to Court approval.
- F. The guardian shall submit reports regarding the status of the guardianship to the Court as ordered by the Court or required by state statute, but not less than annually.
- G. All payments to the guardian from the assets of the ward shall follow applicable federal or state statute, rules and requirements and are subject to review by the Court.

NGA Standard No: 3 – Self-Determination of Ward

- A. The guardian should provide the ward with every opportunity to exercise those individual rights which the ward might be capable of exercising as they relate to the care of the ward's person.
- B. The guardian should attempt to maximize the self-reliance and independence of the ward.
- C. The guardian shall have the affirmative duty to understand and to advocate for person centered planning and the least restrictive alternative on behalf of the ward.

- D. The guardian should encourage the ward to participate to the maximum extent of his/her abilities, in all decisions which affect him/her; to act on one's own behalf in all matters in which he/she is able to do so; and to develop or regain capacity to the maximum extent possible.

NGA Standard No: 4 – Informed Consent

- A. Any decision made by the guardian shall be based on the Informed Consent Standard.
- B. An informed consent is based on a full disclosure of facts needed to make the decision intelligently.
- C. In order to provide informed consent three components must exist:
1. Adequate information on the issue.
 2. Voluntary action.
 3. Lack of coercion.
- D. The guardian stands in the place of the ward and must be given the same information and freedom of choice as the ward would have received if he/she were competent.

Guidelines:

At a minimum, the guardian should evaluate each requested decision using the following criteria:

1. What exactly is the request and what does it mean in lay language?
2. What condition(s) necessitate the treatment or action?
3. Has the ward been informed?
4. Are there any preferences of the ward that can be ascertained either currently or prior to the appointment of the guardian?
5. What is the expected outcome of this decision?
6. What is the benefit of this decision?
7. Why now and not later?
8. What will happen if no decision is made?
9. Are there any alternatives to this request?
10. Is this the least restrictive alternative?
11. What are the risks in this decision?
12. Obtain written documentation of all medical reports.
13. Has a second opinion been rendered?
14. What additional information or input is needed from family members or other professionals to make this decision?

NGA Standard No: 5 – The Process of Decision Making

- A. All decisions made by the guardian shall be Informed Decisions (see Standard 4).
- B. As a first priority, the guardian should ascertain whether the ward had previously expressed preferences and also establish whether the ward has expressed any current wishes.
 - 1. This process represents the principle of Substituted Judgment.
 - 2. Substituted Judgment promotes the underlying values of self-determination and well being of the ward.
 - 3. Substituted Judgment entails making the decision the guardian believes the ward would make based on the ward's previously expressed and/or current wishes.
- C. The principle of Substituted Judgment is not 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. The guardian would then employ the principle of Best Interest as defined by more objective criteria, including but not limited to the standards outlined here.

NGA Standard No: 6 – Decision Making Regarding Medical Services and Medical Treatment

- A. The guardian has a duty to promote and monitor the ward's health and well-being.
- B. The guardian shall ensure that all necessary medical care needed for the ward is appropriately provided.
- C. The guardian has an affirmative duty to determine whether the ward, prior to the appointment of a guardian, executed any advance directives. Upon finding such documents, the guardian shall follow state law with regard to advance directives.
- D. Absent an emergency, execution of a living will, durable power of attorney for health care or other advance directive declaration of intent, which clearly indicates the ward's wishes with respect to that action, the guardian having the appropriate authority shall not grant or deny authorization for medical interventions until he/she has given careful consideration to the factors listed in Standard 4, Informed Consent.

- E. In the case of emergency medical treatment, a guardian having proper authority shall grant or deny authorization of medical treatment based on a reasonable assessment of the factors required by Standard 4 within the time frame allotted by the emergency.
- F. Under extraordinary medical circumstances, in addition to all other factors and resources outlined in Standard 4, the guardian shall utilize ethical, legal, and medical advice with particular attention to ethics committees in hospitals and elsewhere.
- G. The guardian must consider whether a second opinion is necessary when any medical intervention poses a significant risk to the ward. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so. A second opinion shall be obtained from an independent physician.
- H. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- I. In all instances where state law provides for the performance of additional steps prior to granting or denying authorization for medical intervention or treatment, the guardian shall undertake such additional steps.

NGA Standard No: 7 – Decision Making With Regard to Withholding or Withdrawing Medical Care and Treatment

- A. The National Guardianship Association recognizes that there are circumstances in which it is legally and ethically justifiable to consent to the withholding or withdrawing of medical care, including artificially provided nutrition and hydration, on behalf of the ward.
- B. In making this determination there will in all cases be a presumption in favor of the continued treatment of the ward.
- C. For any cases in which the ward has expressed or currently expresses a preference to continue treatment, the guardian shall not consent to withholding or withdrawing or discontinuing treatment.
- D. Not all states delegate the authority to withhold or withdraw care and treatment to the guardian. The guardian shall comply with their state law governing withholding or withdrawing medical care and treatment if it exists.
- E. When making this decision on behalf of the ward, the guardian shall gather and document information as outlined in Standard 4.

NGA Standard No: 8 – Confidentiality

- A. The guardian should keep the affairs of the ward confidential.
- B. The guardian should respect the ward's privacy and dignity especially when the disclosure of information is necessary.
- C. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- D. The guardian will disclose or assist the ward in communicating sensitive information to the ward's family when the disclosure would benefit the ward.
- E. The guardian may refuse to disclose sensitive information about the ward where disclosure is detrimental to the well being of the ward or would subject the ward's estate to undue risk. Such a refusal to disclose information should be reported to the Court in accordance with local practice.

NGA Standard No: 9 – Least Restrictive Alternative

- A. 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/her freedom, rights, and ability to control his/her environment.
- B. The guardian shall weigh the advantages and disadvantages, the risks versus the benefits, and develop a balance between maximizing the growth potential of the ward and maintaining his/her safety and security.
- C. When considering the least restrictive alternative, the guardian shall make individualized decisions. The least restrictive alternative for one ward may not be the least restrictive alternative for another ward.

Guidelines:

In determining the least restrictive alternative for a ward the guardian shall:

1. Become as familiar as possible with the available options in the community regarding the specific decision that needs to be made; such as placement options, different medical services, different vocational and educational services.

2. Know the ward's preferences, if possible. What the ward wants may not be the least restrictive alternative in the eyes of the guardian. However, if what the ward wants meets the balance between safety and independence for the ward and meets or contributes to the well being of the individual, then this would be the least restrictive alternative.
3. When considering a choice among options available, also consider the needs of the ward as determined by professionals. This may include assessment of the ward's functional ability and the ward's health status.

NGA Standard No: 10 – Quality Assurance

- A. Guardians shall actively pursue/facilitate periodic independent review of their guardianship program or case management.
- B. The independent review should occur periodically, but no less than annually and should include a representative sample of cases.
- C. The independent review should include a review of records, a visit with the ward and meeting with the care provider staff.
- D. Independent reviews may be obtained from:
 1. a court monitoring system,
 2. an independent peer, or
 3. an NGA Master Guardian.

Note: Completion of this review does not eliminate the need to comply with any Court mandated monitoring without Court approval.

NGA Standard No: 11 – Management of Multiple Guardianship Cases

- A. The guardian should institute a system to evaluate the level of difficulty of each guardianship assigned or appointed.
- B. The outcome of the evaluation should clearly indicate the complexity of the decisions to be made, and/or the complexity of the estate to be managed. This shall be the guide for determining how many cases any individual guardian may manage.

- C. The guardian shall limit the size of a caseload to the 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 allows regular contact with all service providers.
- D. The size of any caseload must be based on objective evaluation of the activities expected, the time that may be involved in the case, other demands upon the guardian and ancillary support to the guardian.

NGA Standard No: 12 – Guardian of the Person: Ongoing Responsibilities

- A. The guardian who is responsible for the person of the ward should involve the ward, to the extent of the ward's ability, in making decisions about the ward's housing, which shall be the least restrictive environment consistent with the ward's well-being.
 - 1. The guardian shall authorize movement of a ward to a more restrictive environment only after evaluating other medical and health care options, 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 basis of the decision shall be to minimize the risk of substantial harm to the ward, to obtain the most appropriate possible placement and to secure the best treatment for the ward.
- B. The guardian shall ensure that the health care and daily maintenance needs of the ward are provided from every available resource.
- C. Services necessary for the benefit of the ward should be obtained by the guardian when appropriate and available. Whenever possible these services should be paid for through insurance or governmental benefits or services to which the ward is entitled. Such services may include medical care, social services, housing, case management, medical and psychological treatment, education, rehabilitation or vocational training, home care or transportation.
- D. The guardian should attempt to maximize the social interaction of the ward. This may be achieved through facilitating and encouraging the ward's participation in group and community activities, the use of a friendly visitor and communication with others via mail, telephone, Internet, etc.

- E. The guardian should develop and monitor a written plan setting forth short and long-term goals for the ward's personal care, including residential and all medical/psychiatric concerns. Short-term goals should reflect the first year of guardianship and long-term goals should be beyond the first year. The guardianship plan should be updated no less often than annually.
- F. The guardian shall maintain a client file for each ward. The file should include, at a minimum, the following information and documents:
1. Date of birth, address, social security number, medical coverage, physician, diagnoses, medications and allergies to medications.
 2. Legal documents involving the ward.
 3. Advance directives.
 4. Key contacts, service providers.
 5. Documentation of date, time and activity regarding all client and collateral contacts.
 6. Progress notes – as detailed as necessary to reflect contacts made and work done regarding the ward.
 7. Guardianship plan.
 8. Inventory, if required.
 9. Assessments regarding the ward's past and present medical, psychological and social functioning.
 10. Documentation of the ward's known values, lifestyle preferences and known wishes regarding medical and other care and services.
 11. Photograph of the ward.
- G. The guardian shall file all reports on a timely basis with the Court as required by law, but not less than annually. The guardian shall provide thorough documentation of the ward's needs and decisions made affecting the personal status of the ward.
- H. The guardian of the person of a ward, or his/her designee, shall maintain contact with the ward in an amount and frequency to satisfy his/her guardianship duties and responsibilities.

Guidelines:

The guardian or designee shall visit the ward monthly.

1. When communicating with the ward, the guardian should make every effort to ascertain the comfort and satisfaction of the ward in the present living environment and the current needs and desires of the ward. The guardian should evaluate the present living environment in connection with the ward's needs or any change in the extent of the ward's disability or impairment that may dictate a need to change the ward's living environment.
2. The guardian should maintain substantive communication with service providers, caregivers or others attending to the ward in the environment in which the ward is living.

3. The guardian shall participate in all care or planning conferences or staff briefings concerning the residential, educational, or rehabilitation program of the ward.
4. The guardian shall require that each service provider develop an appropriate service plan for the ward and shall take appropriate action to insure that the service plans are being implemented.
5. The guardian shall regularly examine all services, charts, notes, logs, evaluations and writings regarding the ward at the place of residence and at any program site to ascertain that the care plan is being properly followed.
6. The guardian shall be knowledgeable of the ward's circumstances and shall be prepared to address any issues arising at the conference or with staff.
7. The guardian shall assess the ward's physical appearance and condition, 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.
8. The guardian shall advocate on behalf of the ward in an institutional setting with administrative staff. The guardian shall assess the overall quality of care provided to the ward in an institutional setting or by home-based providers, using accepted regulations and care standards as guidelines, seeking remedies when care is found to be deficient.

NGA Standard No: 13 – Conflict of Interest: Ancillary and Support Services

- A. 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 which might be perceived as self-serving or adverse to the position or the best interest of the ward.
- B. Specific ancillary and support service situations that may create an impropriety or conflict of interest include, but are not limited to the following:
 1. A guardian, other than a family guardian, shall not directly provide housing, medical, or other direct services to a ward.

Guidelines:

- a. The guardian shall keep in mind that its duty is to coordinate and assure the provision of all necessary services to the ward or beneficiary rather than to provide those services directly.
- b. To insure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian should be independent from all service providers.

- c. An exception may be made when a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, provided that such exception be in the best interest of the ward. Reasons for the exceptions should be documented.
2. A guardianship program should be a freestanding entity and should not be subject to undue influence.

Guidelines: When a guardianship program is a part of a larger organization or governmental entity there must be an arms length relationship with the larger organization or governmental entity and it must have independent decision making ability.

3. The guardian shall not be in a position of representing both the ward and the provider of service.
4. The non-family guardian may act as petitioner only when no other entity is available to act, provided all other alternatives have been exhausted.
5. The guardian must 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 guardian's ward.
6. The guardian shall not utilize his/her friends or family to provide services for a profit (or fee) unless no other alternatives are available and the guardian discloses this arrangement to the Court.
7. The guardian shall not solicit or accept kickbacks from service providers.
8. The guardian shall consider various ancillary or support service providers and choose or select the provider(s) that best meets the needs of the individual ward.
9. The guardian who is an attorney or employs attorneys, may provide legal services to a ward when it best meets the needs of the ward.

NGA Standard No: 14 – Duty to Exercise Reasonable Care and Skill in Managing the Ward's Estate

- A. The guardian of the estate shall provide competent management of the ward's property and shall supervise all income and disbursements of the estate in compliance with all statutorily prescribed procedures.

- B. The guardian of the estate shall have the duty to keep the assets of the estate safe by keeping accurate records of all transactions and be able to fully account for all of the assets in the estate.
- C. The guardian of the estate shall keep the estate monies separate from the guardian's personal monies; the guardian shall keep individual estate monies separate from each other unless accurate separate accounting exists within the combined accounts.
- D. The guardian of the estate shall, when appropriate, open a burial trust account and make funeral arrangements for the ward.
- E. The guardian of the estate shall employ prudent accounting procedures when managing the estate of the ward in compliance with applicable statutes, regulations and policies.

Guidelines:

- 1. The guardian will act in a manner above reproach and will be open to scrutiny at all times.
- 2. The guardian should determine if a will exists and obtain a copy to determine how to manage the assets and property.
- 3. The Prudent Person Rule is an investment standard that considers the reasonableness of an investment based on whether a prudent person of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would make that investment.
- 4. The Prudent Investor Rule states that:
 - a. All investments must be considered as part of an overall portfolio rather than individually.
 - b. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and guardians of the estate who do not use risk-reducing strategies may be penalized.
 - c. Under most circumstances, the ward's assets must be diversified. Guardians of the estate are obliged to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk.
 - d. The possible effect of inflation must be considered as part of the investment strategy. As a result, portfolios likely will include a greater allocation to equities, as opposed to interest-paying bonds whose value might be eroded by inflation.
 - e. Guardians of the estate have a duty to either demonstrate investment skill in managing assets or to delegate investment management to another qualified party.

NGA Standard No: 15 – Property Management

- A. The guardian of the estate shall not dispose of property of the ward either real or personal, unless such sale is subject to judicial, administrative or other independent review.
- B. In the absence of reliable evidence of the ward's views prior to the appointment of a guardian, the guardian of the estate, having the appropriate authority, shall not sell, encumber, convey or transfer property of the ward, or an interest therein, unless it is in the best interest of the ward.

Guidelines: In considering whether it is in the best interest of the ward to sell the ward's property, the guardian of the estate shall consider the following factors:

1. The benefit of the disposition of the property to improve the life of the ward.
 2. The likelihood that the ward will need or benefit from the property in the future.
 3. The current desires of the ward with respect to the property.
 4. The provisions of the ward's estate plan as it relates to the property, if any.
 5. The tax consequences of the transaction.
 6. The impact of the transaction on the ward's entitlement to public benefits.
 7. The condition of the entire existing estate of the ward.
 8. The ability of the ward to maintain the property.
 9. The availability and appropriateness of alternatives to the disposition of the property.
 10. The likelihood that such property may deteriorate or be subject to waste.
 11. The benefit versus the liability and costs of maintaining the property.
- C. The guardian has the duty to validate the fair market assessment of value of personal and real property through the process of an appraisal by a licensed appraiser.

NGA Standard No: 16 Guardian of the Estate – Ongoing Responsibilities

- A. The guardian shall manage the estate in compliance with applicable statutes, regulations and policies.
- B. The guardian shall post and maintain a bond with surety sufficient for the protection of the ward's estate.
- C. The guardian shall obtain for the ward all public benefits for which he/she is eligible.
- D. The estate of the ward shall be managed for the benefit of the ward and not for the benefit of the guardian, or anyone else personally or professionally related to the guardian.
- E. The guardian should allow the ward the opportunity to manage funds to his or her ability.
- F. The guardian of the estate shall file with the Court all reports as required by law, but no less than annually, and otherwise as ordered by the Court. The guardian shall thoroughly document

management of the ward's estate, carrying out any and all duties required by statute or regulation.

- G. The guardian of the estate shall prepare an inventory of all property for which he/she is responsible and follow state guardianship statutes as to when the inventory is due to the Court. This report should list all the assets owned by the ward with their values on the date the guardian was appointed and shall be independently verified.
- H. All accountings shall contain sufficient information to clearly define all significant transactions affecting administration during the accounting period.
- I. All accountings prepared by the guardian of the estate shall be complete, accurate and understandable.
- J. The guardian, where appropriate, shall oversee the disposition of the ward's assets to qualify the ward for any public benefits program.
- K. The guardian of the estate shall have the duty to make claims against others on behalf of the estate as deemed in the best interest of the ward and the duty to defend against actions which would result in a loss of assets to the estate.
- L. Upon the termination of the guardianship or death of the ward, the guardian of the estate shall facilitate the appropriate closing of the estate and submit a final accounting to the Court.
- M. The guardian shall charge fees that are reasonable and approved by the Court or administrative agency.
- N. The guardian should monitor or manage the personal allowance of the institution-based ward.

NGA Standard No: 17 – Conflict of Interest: Estate, Financial And Business Services

- A. 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 which might be perceived as self-serving or adverse to the position or best interest of the ward.
- B. Specific situations that may create an impropriety or conflict of interest include, but are not limited to the following:

1. The guardian shall not commingle personal or programs funds with the funds of the ward.
 - 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 be also 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 individuals' funds in a single account. In this manner, banking fees and costs are distributed among the individuals, rather than being borne by each separately.
 - d. If the Court allows, the use of combined accounts should only be permitted where the guardian or conservator has available the personnel and the expertise to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges, which are attributable to each individual ward.
2. The guardian shall not sell, transfer, convey or encumber real or personal property or any interest therein to himself, a spouse, coworker, employee, member of the Board of the agency or corporate guardian, an agent, or attorney, or any corporation or trust in which the guardian has a substantial beneficial interest. State law may permit guardians to make such transactions; however, it is NGA's position that it is not best practice for the guardian to purchase a ward's real or personal property.
3. 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 or agency, and the transaction is approved by the Court or the agency administering the ward's benefits.
4. The guardian must not profit in any transactions made on behalf of the estate at the expense of the estate; nor may the guardian compete with the estate of the ward, unless authorized to do so by the Court.
5. The non-family guardian shall not encourage the ward to make gifts or bequests that will benefit the guardian, his/her family or any entity in which the guardian has an interest.
6. The guardian shall not sell or profit from the sale of any guardianship case/file to a successor guardian.

NGA Standard No: 18 – Guardianship Service Fees

- A. Guardians are entitled to reasonable compensation for their services.

- B. The guardian shall bear in mind at all times the responsibility to conserve the estate of the ward when making decisions regarding the provision of guardianship services and charging a fee for such services.
- C. Factors to be considered in determining reasonableness of the guardian's actions include the following:
 - 1. Powers and responsibilities under the Court appointment.
 - 2. Necessity of the service.
 - 3. Time and labor required.
 - 4. Degree of difficulty.
 - 5. Skill and experience required to carry out the duty.
 - 6. Needs of the ward.
 - 7. Costs of alternatives.
- D. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained then they shall clearly and accurately state:
 - 1. Time spent on a task.
 - 2. Duty performed.
 - 3. Expense incurred.
 - 4. Collateral contacts involved.
 - 5. Identification of individual who performed the duty (e.g. guardian, staff, volunteer).
- E. The guardian should only charge for the work directly related to the management of a specific ward.

NGA Standard No: 19 – The Guardian's Relationship with Family Members and Friends of the Ward

- A. The guardian will recognize the value of family and friends to the quality of life of a ward. The guardian will encourage and support the ward in maintaining contact with family members and friends, when doing so benefits the ward and is consistent with the desires of the ward.
- B. The guardian should assist the ward in maintaining or re-establishing relationships with family and friends, except when this would not benefit the ward.
- C. When disposing of the assets of the ward, family members and friends will be notified and given the opportunity, with Court approval, to obtain assets (particularly those with sentimental value).

The guardian should make reasonable efforts to preserve property designated in the ward's Will and other estate planning devices implemented by the ward.

- D. The guardian will maintain communication with the ward's family and friends regarding significant occurrences that effect the ward when such communication would benefit the ward.
- E. The guardian will keep immediate family members and friends advised of all pertinent medical issues, when it would benefit the ward. Family input will be requested and considered in making medical decisions.

Note: Please refer to Standard 8 as it relates to confidentiality issues.

NGA Standard No: 20 – Guardian's Relationship with Other Professionals and Providers of Service to the Ward

The guardian shall treat all professionals with courtesy and respect and strive to enhance cooperation on behalf of the ward.

- A. It is essential that the guardian develop and maintain a working knowledge of the services, providers, and facilities available in the community.
- B. The guardian should stay current with changes in these community resources, as the guardian is often faced with balancing multiple providers who may be serving a number of wards who are located in a variety of community settings.
- C. The guardian, other than a family guardian, does not provide direct service to the ward. The guardian coordinates and monitors services needed by the ward to ensure that the ward is receiving the appropriate care and treatment.
 - 1. If there are no other alternatives at the time of a needed service and the guardian is able to fulfill the need, then, with proper documentation and disclosure to the Court, the guardian may provide the needed service to the ward.
- D. The guardian will engage the services of professionals (attorney, accountant, stockbroker, realtor, doctors, and the like) as necessary to appropriately meet the needs of the ward.

NGA Standard No: 21 – The Guardian's Duties and Responsibilities Regarding Diversity and Personal Preference of the Ward

A. Ethnic, religious and cultural values.

1. The guardian shall attempt to determine to what extent the ward identifies with particular ethnic, religious and cultural values.
2. In order to determine these values, the guardian should be aware of the following factors:
 - a. The ward's attitudes about illness, pain, and suffering.
 - b. The ward's attitudes about death and dying.
 - c. The ward's view about quality of life issues.
 - d. The ward's view regarding societal roles and relationships.
 - e. The ward's attitudes regarding funeral and burial customs.

B. Sexual expression.

1. The guardian shall acknowledge the ward's right to interpersonal relationships and sexual expression. A guardian will take steps to assure that a ward's sexual expression is consensual, that the ward is not victimized and that an environment conducive to this expression is provided.
2. 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 which the ward possesses the capacity to determine the expression consensual.
3. The guardian shall take reasonable measures to protect the health and well-being of the ward.
4. The guardian shall ensure that the ward is informed of all birth control methods. The guardian will consider all birth control options and choose the option that provides the ward the level of protection appropriate to the ward's life style and ability, while considering the preferences of the ward. The guardian will encourage the ward, where possible and appropriate, to participate in the choice of a birth control method.
5. The guardian shall protect the rights of the ward in regard to sexual expression and preference. A review of ethnic/religious/cultural values may be necessary to uphold the ward's values and customs.

NGA Standard No: 22 – Termination and Limitation of the Guardianship/Conservatorship

- A. When appropriate and authorized by the Court and state law, limited guardianships are preferred, rather than plenary (full) guardianships of the person and estate.
- B. The guardian has an affirmative obligation to seek termination or limitation of the guardianship whenever indicated.

Guidelines:

Guardianship should be reviewed for possible limitation or termination as prescribed by state law:

- 1. When the ward has developed or regained capacity in areas where he or she was found incapacitated by the Court.
- 2. When the ward expresses the desire to challenge the necessity of all or part of the guardianship.
- 3. When the ward has died.

NGA Standard No: 23 – The Guardian’s Professional Relationship with the Ward

- A. The guardian shall avoid personal relationships with the ward, the ward’s family or the ward’s friends that may impair judgment or lead to exploitation.
- B. The guardian shall never engage in sexual relations with a ward. Exceptions may include the ward’s spouse or where a physical relationship existed prior to the appointment of a guardian.
- C. An individual who is paid to provide support or care to a ward shall not engage in sexual relations with a ward. A guardian will take steps to assure that the ward is protected from a situation of this nature.

DEFINITIONS

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

BEST INTEREST – Best Interest is 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.

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 actual conflict of interest exists.

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.

DISABLED PERSON – A person 18 years of age or older deemed by the Court to be lacking sufficient understanding or capacity to make or communicate informed decisions concerning the care of his person or financial affairs. See also “Ward.”

FREE STANDING ENTITY – An agency or organization which is independent from all other agencies or organizations.

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. This definition includes the title conservator and certified private or public fiduciary.

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

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

Ad Litem is a person appointed by the Court to make an impartial inquiry into a situation and report to the Court.

Designation of Guardian is a formal means of nominating a guardian prior to the time when a guardian is needed. Also Pre-need Guardian.

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

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

Limited Guardian is a guardian who has been appointed by the Court to exercise the rights and powers specifically designated by a Court order entered after the Court has found that the ward lacks capacity to do some, but not all, of the tasks necessary to care for his/her person or property, or after the person voluntarily petitioned 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 who has been appointed by the Court to exercise all delegable rights and powers of the ward after the Court has found the ward lacks the capacity to perform all of the tasks necessary to care for his/her person or property.

Stand-By Guardian is a person, agency or organization whose appointment as guardian shall become 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.

Qualifications of Court-Appointed Guardians

Family Guardian – A family member guardian is an individual who is appointed as guardian for a person to whom he/she is related to 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 this person as guardian. Upon Court approval a family member may receive reasonable compensation for time and expenses relating to care of the ward.

Guidelines:

The family member guardian:

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

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/her role as guardian. The Guardian may receive reimbursement of expenses or a minimum stipend with Court approval.

Guidelines:

The 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 certified Registered Guardian and Master Guardian, if applicable.

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/her role as guardian. He/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 certified Registered Guardian and a Master Guardian, if applicable.

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 not for-profit entities.

Guidelines:

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 certified Registered Guardians and Master Guardians.

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:

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 certified Registered Guardians and Master Guardians.

Registered Guardian – A registered guardian is an individual who has met the qualifications established by the National Guardianship Foundation.

Guidelines:

Registered Guardian qualifications as established by the National Guardianship Foundation:

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 the following education or training requirements:
 - a. A degree from an accredited college; the degree shall 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/she has not been convicted of or pled guilty or no contest to a felony.

5. Must attest that he/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/she has not been relieved of responsibilities as a guardian by the Court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft or conversion.
7. Must attest that he/she is bonded in accordance with state statutes.
8. Must attest that an insurance or bonding agent has not found him/her liable in a subrogation action.
9. Must successfully complete an examination administered by the National Guardianship Foundation.
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.

Master Guardian – A master guardian is an individual who has met the qualifications established by the National Guardianship Foundation.

Guidelines:

Master Guardian qualifications as established by the National Guardianship Foundation:

1. Must be a Registered Guardian in good standing when submitting an application.
2. Must have a...
Graduate degree from an accredited college or university with three (3) years of full time professional guardianship experience.
OR
Bachelor's degree from an accredited college or university (to include a Registered Nurse) with five (5) years of full time professional guardianship experience.
OR
Twelve (12) years full time professional guardianship experience.
3. A completed application will include:
 - a. An application form.
 - b. Four (4) professional references.
 - c. Proof of employment and education.
 - d. Sign an affidavit on the number of years of guardianship and number of wards served.
4. Professional guardianship experience is defined to include the following:
 - a. Serving in a position of making decisions serving as Court-appointed guardian or as agent for the Court-appointed guardian providing guardianship service directly to or on behalf of two or more unrelated wards.

- b. Spending an average of at least 16 hours per week practicing guardianship during at least three (3) of the last five (5) years, including the most recent year.
- 5. A Master Guardian shall demonstrate experience in at least six of the following, including item a:
 - a. High degree of competence in managing complex issues.
 - b. Manage significant financial estates.
 - c. Conduct or arrange for comprehensive assessment of ward's needs.
 - d. Provide consultation on a wide range of guardianship issues.
 - e. Provide supervision to staff in a guardianship program.
 - f. Plan, implement, control, direct, fund a professional guardianship program.
 - g. Provide case oversight for less experienced guardians.
 - h. Have experience with more than one disability group.
 - i. Provide training and supervision and mentoring to less experienced guardians.
 - j. Be a professional education presenter on guardianship related topics.
 - k. Provide consultation regarding medical procedures, use of psychotropic medications and evaluation of behavioral programs.
 - l. Advance the profession through policy development, legislative advocacy, or community outreach.
 - m. Provide consultation or make decisions on end of life issues and other complex or controversial issues.
 - n. Actively advocate for limited guardianship, alternatives to guardianship and restoration of wards' rights.
- 6. Successful completion of the Master Guardian Examination administered by the National Guardianship Foundation.
- 7. Shall follow the *Model Code of Ethics* for guardians
- 8. Shall follow the *NGA Standards of Practice*.

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 which places as few limits as possible on the ward's rights and personal freedoms as is 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 buy.

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 prior to incapacity.

WARD – A person for whom a guardian has been appointed. Other names for ward are, "Conservatee," "Disabled Person," "Protected Person," and "Incapacitated Person."