

## PREAMBLE

Developing standards for guardians has been an ongoing challenge for the National Guardianship Association (NGA). Considering the variability in state guardianship law, the evolving nature of the national conversation concerning the need for reform in this field, and the inconsistent approach by the states to incorporate reforms into their own legislative frameworks, it is a challenge to present standards of practice to be used by practitioners nationwide. Nevertheless, there are foundational principles which do, and which should, apply across the states despite the variability in state law. These standards capture these principles for use by all guardians. NGA presents them for consideration and implementation by all states to guide best practices.

In 1991, the NGA adopted a previously published Code of Ethics to guide guardians in their decision-making process. The next NGA task 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 membership have now been expanded to cover more of the duties and responsibilities that face court-appointed guardians today.

The same lengthy discussions that took place in 1991 occurred again during each updating of the standards. NGA has adopted standards that reflect as realistically as possible the best or highest quality of practice. While resources may at times be limited, these standards reflect both pragmatic and aspirational principles 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 sometimes makes unavoidable use of legal and medical "terms of art" where they are commonly used by professionals who work in the related areas. In addition, the field of guardianship itself makes use of terms that vary widely from state to state. "Guardian" and "person" are the terms used here to simplify the many references to these roles. Where points apply to professional, as opposed to family, guardians, they are indicated. "Guardian," as used in the standards, means conservator or 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, formed the foundation from which the standards were developed. Other very important sources that helped in the development of our standards of practice are the U.S. Administration on Aging, the AARP, the

## Standards of Practice, National Guardianship Association

Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, California, Illinois, Minnesota, Michigan, New Mexico, and Washington. We thank everyone who has contributed to the development of this living document for their ongoing commitment to the profession of guardianship.

The *NGA Standards of Practice for Guardians* were first adopted by the NGA board of directors and ratified by the membership in 2000. The 2003 edition of the *Standards* incorporates language that came forth from Wingspan 2001, the National Conference on Guardianship Reform. The 2007 edition provides minor clarification of the language in the earlier editions without any substantive changes. These *Standards* were used as a starting point by the 2011 Third National Guardianship Summit in developing new standards. The 2013 edition incorporates the Summit Standards. The Fourth National Guardianship Summit, held in 2021, made further recommendations for guardianship practice that are incorporated into the 2022 edition by Sally Hurme, Greg MacKenzie, Julia Nack, Anthony Palmieri, and Paul Stengle with help from Vicki Alkire.

NGA encourages the adoption and use of these *Standards* by professional organizations, guardianship agencies and programs, guardianship associations, legislatures, courts, or any other entity wanting to bring excellence to the practice of guardianship.

NGA recognizes that entities may desire to adopt or incorporate the *Standards* as an element of state law, court rules or procedures, or organizational policies or procedures. In so doing the adopting entity may find it appropriate to supplement or amend specific sections of the *Standards* to conform to state law or practice. NGA does not discourage such modification but requires written consent from the NGA Board of Directors prior to incorporation of any material modifications and appropriate attribution to the National Guardianship Association.

NGA welcomes and encourages any entity to link to the Practice Standards at [www.guardianship.org](http://www.guardianship.org).

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## STANDARDS OF PRACTICE

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### Standard 1 – Applicable Law and General Standards

- I. The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships.
- II. The guardian shall comply with the requirements of the court that made the appointment.
- III. The guardian shall exercise only those powers granted by the laws of the state and the powers granted by the order appointing the guardian. The guardian shall be familiar with any limitations on the guardian’s powers as set forth under the laws of the state and the limitations set forth in the order appointing the guardian. The guardian shall respect, and advocate for the person’s civil, constitutional, and personal rights, which have not been removed by the court. The guardian shall:
  - A. Make decisions in a manner which respects, and does not violate, the person’s civil, constitutional, and personal rights.
  - B. Advocate for preservation and protection of the person’s civil, constitutional, and personal rights which have not been removed.
  - C. Support the person in exercising any personal, civil and constitutional rights which have not been removed.
  - D. Promptly apply to the court for instruction if the guardian believes that exercise of a person’s civil, constitutional, and personal rights would result in substantial harm to the person or the person’s estate.
- IV. The guardian shall obtain and maintain an understanding of what is required and expected of the guardian, local and statutory court rule requirements, and necessary filings and reports.
- V. The guardian shall be educated about the nature of the person’s disability, functional abilities, mental and physical condition.
- VI. Every guardian should be held to the same standards, regardless of familial relationship between the guardian and the person.
- VII. If a guardian has been appointed on the basis that the guardian possesses greater skills than a person without specialized guardianship training, the guardian is under a duty to use those skills when acting as a guardian and may be held liable for failing to do so.
- VIII. An applicant who has submitted an application to be licensed or certified by any entity or organization providing licensure or certification for guardians shall not knowingly make any false statement of a material fact in any such application or related documents or fail to disclose a fact necessary to correct a misapprehension known by the applicant which may have arisen in the application process.

- IX. The guardian who has reason to believe that another guardian has committed a violation of these standards which has caused or is likely to cause significant harm to a person with a guardianship or the person's financial affairs shall report the matter to the court which appointed the guardian suspected of the violation.
- X. The guardian shall give full cooperation and assistance to any lawful request for information by:
  - A. The court that appointed the guardian,
  - B. Any state or federal governmental authority which is investigating the actions of the guardian,
  - C. Any entity which has issued a license or certification to the guardian which is investigating the actions of the guardian ("Requesting Party"). If the guardian believes that any request for information by a Requesting Party seeks information which is confidential by statute or court rule, the guardian shall promptly seek instruction from the appointing court as to the production of the requested information to the Requesting Party.
- XI. At the beginning of the guardianship and thereafter, as facts and circumstances indicate, the guardian shall advise the person of the right to seek restoration of their rights from the court.
- XII. The guardian shall promptly report to the proper authorities, abuse, exploitation, and/or neglect as defined by state statutes. The guardian shall take reasonable measures to assure that no one is taking advantage of the person, and, if necessary, take legal action against the third-party. This includes reporting to the district attorney, police, and other authorities, and reporting to the court that appointed the guardian that the misconduct has occurred. When deciding if civil action should occur, the guardian shall consider the cost of proceeding, the impact on the person, the likelihood of success, and the possibility of recovery.

## NGA Standard 2 – The Guardian's Relationship to the Court

- I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and state law. All decisions and actions shall be consistent with that court order and state law.
- II. The guardian shall obtain court authorization for actions that are subject to court approval.
- III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions. When the guardian is unsure or it is unclear if the guardian has certain authority, the guardian shall petition the court for instruction.
- IV. All payments to the guardian from the person's assets shall follow applicable federal or state requirements, rules and statutes and are subject to review by the court.

- V. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but no less often than annually. Methods by which guardians of the person and of the estate may keep the court informed about the person's well-being and the status of the estate include but are not limited to:
  - A. Financial plans and personal care plans,
  - B. Appraisals and inventories,
  - C. Accountings and reports.

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

- I. The guardian shall treat the person with dignity.
- II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the guardian's appointment.
- III. The guardian may not engage in sexual relations with the person unless the guardian is the person's spouse or was in a physical relationship with the person before the guardian's appointment.
- IV. The guardian shall seek ongoing education concerning the following:
  - A. Person-centered planning,
  - B. Surrogate decision making,
  - C. Supported decision making,
  - D. Factors which may indicate the abuse of a confidential, fiduciary, supported, or substituted decision-making relationship, whether by fraud, intimidation, undue influence or otherwise,
  - E. Responsibilities and duties of guardians,
  - F. Legal processes of guardianship,
  - G. Tools for resolving conflict, including but not limited to mediation and eldercaring coordination,
  - H. Services available through Protection and Advocacy agencies,
  - I. The role of the guardian ad litem,
  - J. Achieving a Better Life Experience (ABLE) accounts and special needs trusts,

- K. Providing services in the most integrative and least restrictive setting, including compliance with the Americans with Disabilities Act of 1990 as amended.

## NGA Standard 4 - The Guardian's Relationship with the Person's Family and Friends

- I. The guardian shall promote social interactions and meaningful relationships consistent with the person's goals, needs and preferences.
  - A. The guardian shall encourage and support the person in maintaining contact with family and friends, unless such contact will substantially harm the person.
  - B. The guardian may not interfere with established relationships, as defined by the person, unless necessary to protect the person from substantial harm.
  - C. The guardian shall make reasonable efforts to maintain the person's established social and support networks.
  - D. The guardian may take reasonable steps to restrict contact between the person and another who poses a risk of significant, financial, physical, or psychological harm to the person. If the guardian believes the restriction will exceed seven business days for family or established relationships, and 60 days for other relationships, the guardian shall bring the restriction and the reason for the restriction to the court's attention.
- II. When it becomes necessary to dispose of the person's assets, with court approval, the guardian may give family and friends the opportunity to obtain those assets (particularly those with sentimental value).
- III. The guardian shall make reasonable efforts to preserve property designated in the person's will and other estate planning devices. The person's goals, needs and preferences shall have priority over all other interests which may arise in the person's property after death.
- IV. The guardian shall maintain communication with the person's family and friends regarding significant occurrences that affect the person when the guardian reasonably believes that the person would have maintained communication with those individuals and that such communication by the guardian would not result in substantial harm to the person.
- V. The guardian shall seek the input of the person's family and friends when making major medical and placement issues for the person and when formulating or revising the guardianship plan provided the guardian reasonably believes that the person would have involved those individuals in the decision-making or planning process and that such involvement would not result in substantial harm to the person.
- VI. The guardian shall make reasonable efforts to resolve any conflict in a manner which most efficiently meets the person's goals, needs and preferences.

- VII. The guardian may use conflict resolving tools, including for example, mediation or eldercaring coordination, provided that the person with a guardianship is willing and able to participate and doing so will not adversely affect the person. The guardian of the estate may pay the reasonable fees and costs under this standard provided there are sufficient resources.

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

- I. The guardian shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation for the benefit of the person.
- II. The guardian shall cooperate with other surrogate decision-makers for the benefit of the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, representative payee, trustee, and VA fiduciary.
- III. The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community.
- IV. The guardian shall stay current with changes in community resources to ensure that the person receives high-quality services from the most appropriate provider.
- V. A guardian who is not related to the person or in a pre-existing domestic relationship may not directly provide housing, medical, legal, or other direct services to the person for remuneration without court order.
- VI. The guardian shall engage the services of professionals (e.g., attorneys, accountants, physicians, real estate agents, stockbrokers) as necessary to appropriately meet the person’s goals, needs and preferences.
- VII. The guardian may delegate a specific power to an agent which a guardian of comparable skills would delegate under the circumstances. The delegation must be consistent with the guardian’s fiduciary duties and the guardian’s plan.
  - A. In delegating a power, the guardian shall exercise reasonable care, skill, and caution in:
    - 1. Selecting the agent,
    - 2. Establishing the scope and terms of the agent’s work in accordance with the guardian’s plan,
    - 3. Monitoring the agent’s compliance and performance with the delegation.

## NGA Standard 6 – Informed Consent

Decisions the guardian makes on behalf of the person shall be based on the principle of informed consent. Informed consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

- I. Informed consent is based on adequate information on the issue, voluntary action, and lack of coercion.
- II. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if the person did not have a guardianship.
- III. The following guidelines apply to the process for a guardian to provide informed consent for another:
  - A. Encourage and support the person in understanding the facts and directing the decision,
  - B. Maximize the person's participation in making the decision,
  - C. Have a clear understanding of the issue for which informed consent is being sought,
  - D. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
  - E. Determine the conditions that indicate treatment or action,
  - F. Determine whether the person has previously stated preferences regarding a decision of this nature,
  - G. Determine why this decision needs to be made now rather than later,
  - H. Determine what will happen if a decision is made to take no action,
  - I. Determine what the least restrictive alternative is for the situation,
  - J. Obtain a second medical or professional opinion, when necessary,
  - K. Obtain information or input from family, friends, and from other professionals,
  - L. Obtain written documentation of all reports relevant to each decision.

## NGA Standard 7 – Standards for Decision Making

- I. The guardian shall identify and advocate for the person's goals, needs and preferences. Goals are what are important to the person. Preferences are specific expressions of choice.
  - A. First, the guardian shall ask the person what they want.



- B. Second, if the person has difficulty expressing what they want, the guardian shall do everything reasonably possible to help the person express their goals, needs and preferences.
- C. Third, only when the person, even with assistance, cannot express their goals, needs and preferences, shall the guardian seek input from others familiar with the person to determine what the person would have wanted.
- D. Finally, only when the person's goals, needs and preferences cannot be ascertained may the guardian make a decision in the person's best interest.

## II. Substituted Judgment

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

## III. Best Interest

- A. Best interest is the principle of decision making that should be used only when the person has never had capacity, when the person's goals, needs and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- B. The best interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the person's needs.
- C. The best interest principle requires the guardian to consider:
  - 1. Information received from professionals and persons who demonstrate sufficient interest in the welfare of the adult,
  - 2. Other information the guardian believes the adult would have considered if the adult were able to act,
  - 3. Other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

## IV. Supported Decision Making

- A. Supported decision making means a series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed

to assist an individual with a disability to make and communicate decisions about the individual's life.

## 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 person's personal and financial goals, needs and preferences while placing the least restrictions on the person's freedom, rights, and ability to control their setting.
- II. The guardian shall weigh the risks and benefits of the decision and develop a balance between maximizing the person's independence and self-determination and maintaining the person's dignity, protection, and safety.
- III. When determining the least restrictive alternative, the guardian shall:
  - A. Become familiar with the available options whether it be for education, medical treatment, personal care, residence, vocational training, or otherwise.
  - B. Strive to know the person's goals, needs and preferences.
  - C. Consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's care needs, functional ability, or health status.
  - D. Make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The guardian shall petition the court to restore the person's rights or limit the guardian's authority if the assessment so indicates.

## NGA Standard 9 – Self-Determination

- I. The guardian shall provide the person every opportunity to exercise the rights the person is capable of exercising.
- II. The guardian shall maximize the person's self-reliance and independence.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions, to act on their own behalf in all matters in which the person is able to do so, and to develop or regain capacity to manage own personal and financial affairs to the maximum extent possible.
- IV. The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs and preferences. The plan shall emphasize the person's abilities, skills, and strengths to the greatest extent reasonably possible.

- V. The guardian shall, to the greatest extent reasonably possible, seek to ensure that the person leads the planning process. If the person is unable to lead the planning process, the guardian shall ensure that the person participates in the process.

## NGA Standard 10 – The Guardian’s Duties Regarding the Person’s Diversity and Personal Preferences

- I. The guardian shall determine the person’s particular cultural, ethnic and religious customs, practices, and values. The guardian shall also consider the person’s views regarding:
  - A. Illness, pain, and suffering,
  - B. Death and dying,
  - C. Quality of life,
  - D. Relationships and society roles,
  - E. Burial and funeral customs.
- II. The guardian shall acknowledge the person's right to sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, and that a setting is conducive to this expression in privacy is provided. The guardian shall make reasonable efforts to protect the person’s right to sexual expression and preferences in a safe manner which does not victimize any person engaging in the sexual activity or otherwise cause substantial harm to the person.
  - A. The guardian shall ensure that the person has information about and access to accommodations necessary to permit sexual expression to the extent the person desires and to the extent the person possesses the capacity to consent to the specific activity.
  - B. The guardian shall take reasonable measures to protect the person’s health and well-being.
  - C. The guardian shall ensure that the person is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the person the level of protection appropriate to the person's ability and lifestyle, while considering the person’s goals, needs and preferences. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.

## NGA Standard 11 - Confidentiality

- I. The guardian shall keep the person’s affairs confidential.
- II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.

- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, unless it will substantially harm the person.
- V. The guardian may refuse to disclose sensitive information about the person when disclosure would be detrimental to the person's well-being or would subject the person's estate to undue risk. Such a refusal to disclose information must be reported to the court.

## NGA Standard 12 – Duties of the Guardian of the Person

- I. The guardian shall have the following duties and obligations to the person unless the order of appointment provides otherwise:
  - A. See that the person is living in the most appropriate setting that is least restrictive and addresses the person's goals, needs and preferences.
    - 1. In selecting among residential settings, the guardian shall give priority to home or other community-based settings, consistent with the person's goals, needs and preferences.
    - 2. Except for periods of rehabilitation or hospitalization, the guardian shall seek prior court approval before relocating a person to another state or to a setting that places restrictions on the person's ability to leave or have visitors.
  - B. Give priority to a setting that meets the person's needs in the least restrictive manner that is reasonably feasible.
  - C. Give priority to a setting that allows the person to continue important social relationships and meets the person's needs without unnecessary restrictions.
  - D. Promptly inform the appointing court when the person's residential setting changes.
  - E. Promptly inform the person's family, friends, and any others entitled to notice of the person's periods of rehabilitation, hospitalization, and changes in residential setting.
  - F. Place the person in a long-term institutional setting only when necessary to minimize the risk of substantial harm to the person, to obtain the most appropriate placement possible, and to secure the best treatment for the person, with court approval if required by state law.
  - G. Ensure that provisions are made for the person's care, comfort, health, maintenance, and support.

- H. Make reasonable efforts to secure for the person appropriate educational, training, and vocational opportunities, and medical, psychological, therapeutic, and social services.
- I. Seek court approval when a civil commitment, the dissolution of a marriage, or another extraordinary circumstance is being addressed.
- J. File with the court, on a timely basis but not less often than annually, all reports required by court rule, regulations, state statutes, or the court which appointed the guardian.
- K. Adhere to the requirements of Standards 17 and 18 to the extent that the court has authorized the guardian of the person to manage the person's property.
- L. Promptly inform the court of any change in the person's capacity that warrants and expansion or restriction of the guardian's authority or when an effective alternative is available.
- M. Promptly inform the court where restoration of rights or limitations of guardian authority is indicated.

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

- I. After appointment the guardian shall take the following initial steps:
  - A. The guardian shall address all the person's issues requiring immediate action.
  - B. The guardian shall meet with the person as soon after the appointment as is feasible. At the first meeting, the guardian shall:
    - 1. Communicate the role of the guardian,
    - 2. Explain the rights retained by the person as set forth in the NGA Statement of Rights and in applicable state laws,
    - 3. Assess the person's physical and social situation; their educational, vocational and recreational needs; their goals, needs and preferences; and the available support systems.
  - C. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the guardian's appointment.
  - D. The guardian shall:
    - 1. Gather any missing necessary information regarding the person.
    - 2. Obtain an evaluation of the person's condition, functional status, and treatment from the person's treating physician or appropriate specialist, if a

comprehensive medical evaluation was not completed as part of the petitioning process or has not been done within the past year.

3. Obtain a psychological evaluation, if appropriate.
  4. Make an inventory of advance directives. Such statements of intent would include, but are not limited to, living wills, organ donation statements, powers of attorney, and statements by the person recorded in medical charts.
  5. Establish contact with and develop a regular pattern of communication with the guardian of the estate and any other fiduciary for the person.
- II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the person's goals, needs and preferences. The plan shall:
- A. Emphasize a "person-centered philosophy".
  - B. Be based on a multidisciplinary functional assessment.
  - C. Address educational, medical, psychiatric, recreational, residential, social, training, and vocational needs, and any other state requirements.
  - D. Address whether the person's finances and budget are in line with the services the person needs and are flexible enough to deal with the person's changing status.
  - E. Be updated no less often than annually.
- III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:
- A. The person's name, date of birth, address, telephone number, Social Security number, health insurance, physicians, diagnoses, medications, and allergies to medications,
  - B. Documentation regarding the person's goals, needs and preferences, and known wishes regarding medical and other care and services,
  - C. Advance directives,
  - D. A list of key contacts,
  - E. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,
  - F. A list of all over the counter and prescribed medication the person is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication,
  - G. Documentation of all significant contacts regarding the person, including the date, time, and activity,

- H. Detailed progress notes that reflect contacts made and services provided to the person,
  - I. The guardianship plan,
  - J. An inventory, if required,
  - K. Assessments regarding the person's past and present medical, psychological, and social functioning,
  - L. A photograph of the person.
- IV. The guardian shall visit the person no less than monthly. The guardian shall assess the person's physical appearance and condition and assess the appropriateness of the person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
- V. The guardian shall regularly examine all services and all charts, evaluations, logs, notes, and other documents regarding the person at the place of residence and at any program site to ascertain that the person's goals, needs and preferences are being properly followed.
- VI. The guardian shall participate in all care or planning conferences concerning the person's educational, residential, vocational, or rehabilitation program.
- VII. The guardian shall maintain substantive communication with caregivers, service providers, and others providing services to the person.
- VIII. The guardian shall work with each service provider to develop and implement an appropriate service plan for the person.
- IX. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the person's current goals, needs and preferences, including but not limited to:
- A. Evaluating the plan,
  - B. Enforcing residential rights, legal and civil rights,
  - C. Ensuring quality of care and appropriateness of the setting.
- X. The guardian shall advocate on behalf of the person with staff in all residential placements. The guardian shall assess the overall quality of services provided to the person, using accepted regulations and care standards as guidelines and seeking remedies when the placement or care is deficient.
- XI. The guardian shall fully identify, examine, and continue to seek information regarding options that will fulfill the person's goals, needs and preferences.

- A. Guardians shall take full advantage of professional assistance in identifying all available options for long-term services and supports.
  - B. Sources of professional assistance include but are not limited to area agencies on aging, centers for independent living, protection and advocacy agencies, long-term care ombudsmen, developmental disabilities councils, aging and disability resource centers, and community mental health agencies.
- XII. The guardian shall be well-informed about the person's disabilities, functional abilities, mental and physical conditions.

## NGA Standard 14 – Decision-Making About Medical Treatment

- I. The guardian shall promote, monitor, and maintain the person's health and well-being.
- II. The guardian shall take reasonable steps to ensure that all medical care for the person is appropriately provided, and that the person is treated with dignity.
- III. The guardian shall take reasonable steps to ensure that the person receives appropriate health care consistent with person-centered decision making.
- IV. The guardian, in making health care decisions or seeking court approval for a decision, shall:
  - A. Maximize the participation of the person,
  - B. Acquire a clear understanding of the medical facts,
  - C. Acquire a clear understanding of the risks and benefits of each health care option,
  - D. Encourage and support the person in understanding the facts and directing a decision,
  - E. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with *Standard 7*.
- V. The guardian shall determine whether the person, before the appointment of a guardian, executed any health care documents, such as health care powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts. The guardian shall inform the court that such documents exist.
- VI. Absent an emergency or the person's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the person's wishes with respect to a medical intervention, a guardian who has authority to make health care decisions may not grant or deny authorization for a medical intervention until they have given careful consideration to the criteria listed in Standards 6 and 7.
- VII. During an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7.



- VIII. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the person. The guardian shall obtain a second opinion from an independent physician.
- IX. When faced with 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 institutional ethics committees.
- X. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- XI. The guardian may not authorize extraordinary procedures without prior authorization from the court unless the person has executed a living will or durable power of attorney that clearly indicates the person's desire with respect to that action. Extraordinary procedures may include, but are not limited to, the following medical interventions:
  - A. Experimental treatment,
  - B. Sterilization,
  - C. Abortion,
  - D. Electroshock therapy.
- XII. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care, unless not in accordance with the person's goals, needs and preferences.
- XIII. The guardian shall keep individuals important to the person reasonably informed of important health care decisions.

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

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

- III. When making this decision on behalf of the person, the guardian shall gather and document information as outlined in Standard 6 and shall follow Standard 7.

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

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the person’s goals, needs and preferences. Conflict of interest arises where the guardian has some personal or professional interest that can be perceived as self-serving or adverse to the position or best interest of the person. A guardian shall avoid the appearance of self-dealing and shall administer the guardianship solely in the interest of the person. This means that the guardian must not take advantage of their position as a guardian by acting for their own personal or financial interest. Nevertheless, guardians are entitled to reasonable compensation. [See Standard 22.]
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing, and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create a conflict of interest include the following:
  - A. A guardian who is not related to the person may not directly provide housing, medical, legal, or other direct services to the person for remuneration without court order.
    - 1. The guardian shall coordinate and assure the provision of all necessary services for the person.
    - 2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
    - 3. When a guardian can demonstrate unique circumstances in the best interest of the person, indicating that no other entity is available to act as guardian, or to provide needed direct services, the guardian shall seek court approval for the provision of direct services.
  - B. 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.
  - C. The guardian’s duty of loyalty must solely be to the person and the guardian shall not be in a position where the professional relationship would impair the duty to the person.
  - D. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all options for available and appropriate petitioners have been exhausted.

- E. Unless the person is a family guardian, the guardian shall obtain court approval to employ the guardian's family to provide direct services for remuneration.
- F. The guardian shall engage only persons or entities to provide services that best meet the person's goals needs, and preferences.
- G. The guardian shall neither solicit nor accept incentives from service providers.
- H. A guardian who is an attorney or employs attorneys may provide legal services to a person only when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.
- I. The guardian may enter into a transaction that may be a conflict of interest or have the appearance of a conflict of interest or self-dealing only when necessary, or when there is a significant benefit to the person and such transaction is disclosed to interested parties and prior court approval is obtained.

## NGA Standard 17 – Duties of the Guardian of the Estate

- I. The guardian of the estate is a fiduciary. As a fiduciary, the guardian has a duty to:
  - A. Administer the guardianship diligently, in good faith in accordance with court orders and state law and in least restrictive manner that maximizes the dignity, autonomy and self-determination of the person.
  - B. Administer the guardianship as a prudent person would in compliance with court orders and state law. The duty of prudence requires the exercise of reasonable care, skill, and caution.
  - C. Seek advice, consultation, or support from others in performing the duties of the guardianship if a prudent guardian would do so under the circumstances.
  - D. Review and understand the guardian's orders and the legal duties under state law.
- II. Subject to state law, the guardian may not delegate responsibility for the management of the estate to others.
- III. The guardian may not relinquish the responsibilities as guardian except in accordance with court order and state law.
- IV. When making decisions the guardian shall:
  - A. Give priority to person's goals, needs and preferences.
  - B. Weigh the costs and benefits to the estate.
  - C. Consider the person's current wishes, past practices, and reliable evidence of likely choices.

- D. Assist and encourage the person to act on their own behalf and to participate in decisions.
- E. Consider the best interests of the person, only if substantial harm would result or there is no reliable evidence of the person's likely choices.
- V. The guardian shall use reasonable efforts to control, inventory, and monitor the person's assets, income, and liabilities.
- VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.
- VII. The guardian shall act in a manner above reproach and their actions will be open to scrutiny at all times.
- VIII. The guardian shall manage the estate only for the benefit of the person.
- IX. The guardian shall keep accurate records and be able to fully account for all assets, income, and expenditures of the estate.
- X. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets, if a prudent guardian would do so under the circumstances.
- XI. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to professionals with appropriate expertise when managing the estate.
- XII. The guardian shall employ prudent accounting procedures.

The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property. The will should be filed, under seal, with the court which appointed the guardian.
- XIII. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, local and statutory court rule requirements, and necessary filings and reports.
- XIV. The guardian must provide appropriate financial oversight and be able to make a full accounting of all the assets of the estate.

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

- I. The initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues 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, dissipation, exploitation, or loss. The guardian shall:

1. Ascertain the assets, income, and liabilities of the person,
  2. Ascertain the person's goals, needs and preferences,
  3. Coordinate and consult with the person's family and friends as the circumstances require.
- B. The guardian shall meet with the person as soon after the appointment as feasible. At the first meeting the guardian shall:
1. Communicate the guardian's role to the person,
  2. Outline the rights retained by the person and the grievance procedures available,
  3. Determine the person's previously and currently expressed goals, needs and preferences,
  4. Attempt to gather from the person any necessary information regarding the person's assets, income and liabilities,
  5. Determine whether the person has relied on other individuals for support in financial management.
- II. The guardian shall become educated about the nature of any incapacity, condition, and functional capabilities of the person, as well as the nature of the person's property.
- III. The guardian shall develop a financial plan with a "person-centered philosophy".
- IV. The guardian shall develop and implement a financial plan and budget for the management of expenses and resources that corresponds with the person's care plan and addresses the person's goals, needs and preferences. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-makers shall communicate regularly and coordinate efforts with regard to care and financial plans, as well as other events that might affect the person.
- V. The guardian shall value the goals, needs and preferences of the person over the preservation of the estate. The guardian's obligation is to reasonably manage the person's assets and income to achieve the person's goals, needs and preference, rather than preserving them for those who might be a beneficiary of the decedent's estate.
- VI. When making distribution decisions, the guardian shall make decisions that manage but do not necessarily eliminate risks, to achieve the person's goals, needs and preferences.
- VII. The guardian shall be bonded or insured according to the court order or state law to protect the person's estate.

- VIII. The guardian shall make reasonable inquiry into the existence and whereabouts of all assets under the guardian's authority. The guardian must determine the fair market value of those assets on the date required by state law.
- IX. The guardian shall take reasonable steps to safeguard the person's property and protect it from destruction, dissipation, exploitation, loss, or theft.
- X. The guardian shall obtain all public and insurance benefits for which the person is eligible. When appropriate and with any necessary court approval, the guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.
- XI. The guardian shall thoroughly document the management of the estate.
- XII. The guardian shall prepare an inventory of all property for which they are responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed.
- XIII. Accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. Accountings must be complete and accurate.
- XIV. On the termination of the guardianship or the death of the person, the guardian shall facilitate the closing of the guardianship estate and submit a final accounting to the court.
- XV. If the person receives an allowance, the guardian shall monitor that allowance consistent with the court order and strive to maximize the person's independence but also safeguard from any exploitation and undue waste.
- XVI. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

## NGA Standard 19 – Property Management

- I. The guardian may not dispose of the person's real or personal property without administrative, judicial, or other independent review. The guardian may not sell the person's residence without court approval.
- II. In considering whether to dispose of the person's real property, the guardian shall consider the following:
  - A. Whether disposing of the property will benefit or improve the life of the person,
  - B. The likelihood that the person will benefit from the property in the future,
  - C. The previously expressed or current desires of the person with regard to the property,
  - D. The provisions of the person's estate plan as it relates to the property, if any,
  - E. The tax consequences of the transaction,

- F. The impact of the transaction on the person's entitlement to public benefits,
  - G. The condition of the entire estate,
  - H. The ability of the person to maintain the property,
  - I. The availability and appropriateness of alternatives to the disposition of the property,
  - J. The likelihood that property may deteriorate or be subject to waste,
  - K. The benefits versus the liability and costs of maintaining the property.
- III. The guardian shall consider the necessity for an independent appraisal of real and personal property.
- IV. The guardian shall pay the cost of insuring the person's property from the estate as is reasonably prudent to protect the estate from casualty, loss, or liability.

## NGA Standard 20 – Conflict of Interest and Self-Interest

- I. The guardian shall avoid conflicts of interest or the appearance of conflicts of interest and shall not enter into transactions or take actions that will benefit the guardian or any of the guardian's relatives. If a conflict or perceived conflict arises, the guardian shall disclose the conflict or perceived conflict to the court prior to any benefit being conferred and request permission to proceed.
- II. The guardian must refrain from personal or professional dealings that might put the guardian's own self-interest or that of another person above the interest of the person.
- III. Specific situations that may create an appearance of conflict of interest or self-interest include the following:
  - A. When an individual or organization serves several persons, it may be more efficient and cost-effective to pool the individual estate funds in a single account. If the court allows the use of combined accounts, the guardian must keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.
  - B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to themselves, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
  - C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above.

- D. The guardian may not loan or give money or property of value from the person's estate unless specific prior court approval is obtained.
- E. The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly unless specific prior court approval is obtained and a reasonable showing is made that such support is consistent with the person's goals, needs and preferences and will not substantially harm the estate.
- F. The guardian may not borrow funds from, or lend funds to, the person unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the person's benefits, and the transaction is approved by the court.
- G. The guardian may not profit from any transactions made on behalf of the person's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

## NGA Standard 21 – Termination and Limitation of Guardianship

- I. Limited guardianship of the person and estate is preferred over a plenary guardianship.
- II. The guardian shall assist the person to develop or regain the capacity to manage the person's personal and financial affairs.
- III. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
  - A. When the person has developed or regained capacity in areas in which the person was found incapacitated by the court,
  - B. When less restrictive alternatives exist,
  - C. When the guardianship no longer benefits the person.
- IV. The guardian shall not interfere with the person's reasonable efforts to seek restoration of rights removed by the court and shall support the person's efforts to seek such restoration.
  - A. The person is entitled to advocacy to seek the restoration of the person's rights and to use the person's estate to pay reasonable costs for such advocacy.
  - B. The guardian shall maintain documentation of the person's requests and the decisions.

## NGA Standard 22 – Guardianship Service Fees

- I. The guardian is entitled to reasonable compensation for their services.



## Standards of Practice, National Guardianship Association

- II. The guardian has the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. The guardian should consider the following factors in supporting the reasonableness of their fee request:
  - A. Powers and responsibilities under the court appointment,
  - B. Necessity and quality of the services,
  - C. The request for compensation in comparison to a previously disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity,
  - D. The guardian's experience, licensure, professional standing, training, and skills,
  - E. The character of the work to be done, including difficulty, degree of skill and care required, intricacy, importance, time, or responsibility undertaken,
  - F. The conditions or circumstances under which a service was performed, including emergency matters requiring urgent attention, services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions,
  - G. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could render the service at less expense,
  - H. The benefit of the services to the person,
  - I. The fees customarily paid for like services in the community,
  - J. Extent to which the services provided were consistent with the guardian's plan.
- V. The guardian shall:
  - A. Disclose a detailed explanation for any claim for fees.
  - B. Disclose the basis for fees (e.g., rate schedule) at the time the guardian is appointed.
  - C. Disclose a projection of annual fees within 90 days of appointment.
  - D. Disclose fee changes.
  - E. Seek authorization for fee-generating actions not contained in the appointment.

- VI. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek approval to resign when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and, in that event shall seek instructions from the court.
- VII. A guardian may seek payment of fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance and health care insurance premiums.
- VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. Time records shall clearly and accurately state:
  - A. Date and time spent on a task,
  - B. Duty performed,
  - C. Expenses incurred,
  - D. Identity of the individual who performed the duty (e.g., guardian, staff, volunteer).
- IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

## NGA Standard 23 – Management of Multiple Guardianship Cases

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

## NGA Standard 24 – Quality Assurance

- I. The guardian shall actively pursue and facilitate periodic independent review of their provision of guardianship services.

- A. The independent review must include, but is not limited to, agency policies and procedures, records, and visits with persons served and individuals providing direct services.
  - B. The independent review must include a representative sample of cases.
- II. An independent review may be obtained from:
- A. A court monitoring system,
  - B. An independent peer,
  - C. A Center for Guardianship Certification National Master Guardian.
- III. 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. A guardianship practice is defined as private, professional guardianship services provided to two or more persons found by a court to be incapacitated.
- II. A professional guardian may choose to sell all or a portion of a guardianship practice, including goodwill, subject to the following guidelines:
  - A. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons served during the period of the sale and transfer of ownership.
  - B. The professional guardian shall require documentation of the purchaser's qualifications to serve as guardian.
  - C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons served is not appropriate.
  - D. The sale price for the guardianship practice must not be the sole consideration in selecting the purchaser.
  - E. The professional guardian shall provide formal written notice of the proposed sale to the court, to the persons served, and to other interested parties, even if not required by state statutes.
  - F. The professional guardian may not disclose confidential information regarding the persons served for the purpose of inducing a sale of a guardianship practice.

## Definitions

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

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

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

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

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

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

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

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

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

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

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

**DOMESTIC RELATIONSHIP** - A pre-existing relationship with another person who is or was a spouse or partner of the person, or ordinarily shared a household with the person.

**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.

**FAMILY** – An individual with whom the person has an established relationship and who the guardian reasonably believes the person considers to be family.

**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.

**FRIEND** – An individual with whom the person has an established relationship and who the guardian reasonably believes the person considers to be a friend.

**FUNCTIONAL ASSESSMENT** - A diagnostic tool that measures the overall well-being of a person and provides a picture of how well the person is able to function in a variety of multidimensional situations.

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

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

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

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

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

**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 person.

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

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

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

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

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

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

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

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

**PERSON-CENTERED PLANNING**<sup>1</sup> - A family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand, and clearly describe the person's unique characteristics, so that the person:

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

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

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

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

**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 person's known wishes expressed before incapacity, provided the person was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

## NGA and CGC Qualifications for Court-Appointed Guardians

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

Guidelines:

A corporate guardian:

1. Shall follow the *NGA Ethical Principles*.
2. Shall follow the *NGA Standards of Practice*.
3. Shall follow the *NGA Agency Standards of Practice*
4. Should strive to have decision making staff become National Certified Guardians and National Master Guardians.

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

Guidelines:

A family guardian:

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

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

Guidelines:

An individual professional guardian:

1. Shall follow the *NGA Ethical Principles*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to become a National Certified Guardian and National Master Guardian.



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

Guidelines:

A National Certified Guardian:

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

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

Guidelines:

A National Master Guardian:

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

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

Guidelines:

A public guardian:

1. Shall follow the *NGA Ethical Principles*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision making staff become National Certified Guardians and National Master Guardians.

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

Guidelines:

A volunteer guardian:

1. Shall follow the *NGA Ethical Principles*.
2. Shall follow the *NGA Standards of Practice*.
3. Is encouraged to become a National Certified Guardians and National Master Guardians.