Agenda

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

October 19, 2016
12:00 to 2:00 p.m.
Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

12:00 p.m.	Welcome, minutes, meeting agenda	Tab 1	David Connors
12:15 p.m.	Public education classes on advance life planning and guardianship process: • Report on classes in Vernal and Logan • 2017 class schedule	Tab 2	Judge Connors Judge Brady Kent Alderman Karolina Abuzyarova
12:30 p.m.	Follow up on guardianship Coris statistics request	Tab 3	Judge Brady Nancy Sylvester
12:45 p.m.	National Guardianship Standards: http://www.guardianship.org/documents/Standards_of_Practice.pdf • Supported decision-making • Implementation in Utah	Tab 4	Shannon Alvey Kent Alderman
1:20 p.m.	Screening of a documentary "Caring for Mom and Dad" and panel discussion • Sept.29, The City Library, Salt Lake City • October 12, Uinta County Library, Vernal • November 12, The DiFiore Center, St.George		Karolina Abuzyarova
1:25 p.m.	Suggested meeting schedule in 2017: 4th Wednesday of the month		David Connors

Committee webpage: http://www.utcourts.gov/utc/wings

Last meeting in 2016: December 7th or 14th

Tab 1

Working Interdisciplinary Network of Guardianship Stakeholders

August 24, 2016 summary minutes

Attendees: Judge David Connors, Judge James Brady, Kent Alderman, Nate Crippes, Karolina Abuzyarova, Nancy Sylvester, Shannon Alvey, Daniel Musto, Nels Holmgren, Wendy Fayles Joanne Bueno Sayre, Heather Marshall, Jason Ralston

Excused: Nan Mendenhall, Holly Kees, Patricia Vigo

No show: Carol Fletcher, Lisa Thornton, Joseph Taylor, James Toledo

Committee chair welcomed the group, asked everyone present to introduce themselves for the guests. Nate Crippes attended on behalf of the Disability Law Center, as Rob Denton left organization. Another guest at the meeting was Heather Marshall, Information Analyst with Court Services. First presenter was Jason Ralston, a Web Developer in Court Services.

Guardianship Website Statistics
Jason made a presentation on the guardianship web pages traffic for the fiscal year 2016, from July 2015 until July 1 2016. He started by explaining the way he tracks statistics: it measures by sessions (people visits) and page views that are unique. There are over 300 guardianship and conservatorship webpages with total page views of 58,029. Guardianship related webpages occupy 1.6% of Utah State Court website, and receive 0.7% of the website traffic.

Top 10 most visited webpages are:

- Guardianship and conservatorship homepage (30% of traffic, 17, 333 page views)
- Reports required from the guardian and conservator (9%, 5,438 views)
- Procedure for appointing a guardian for an adult (7%, 4,153 views)
- Conservator of a minor (5%, 2,889 views)
- Options for protecting an adult with diminished capacity (4%, 2,579)
- Nominating a guardian and conservator (3%, 1,590)
- Ending a guardianship or conservatorship (3%, 1,583)
- Guardianship signature program (2%, 1,287)
- Authority and responsibilities of a guardian (2%, 1,277)
- Procedure for appointing a conservator for an adult (2%, 1,262)

Guardianship and conservatorship forms had 12,588 views and top 4 forms viewed are:

- Report on the status of the ward
- Private information record in guardianship and conservatorship cases
- Motion to terminate guardianship and/or conservatorship
- Guardian and conservator certificate of mailing

Coris Guardianship Cases Tracking
Next presenter, Heather Marshall, provided information regarding the statistics on the following guardianship related information:

- limited vs full guardianship appointments
- terminated guardianship cases
- restored capacity cases

Karolina asked if there is a way to get data on how many guardianships are open and subject to the jurisdiction of the court statewide and that at one point, Tim Shea estimated 12,000 open

adult guardianship cases (including those not subject to reporting requirements). Heather explained that this can be difficult to track, but that there may be a way district by district to resolve it.

Heather indicated that roughly half of all adult guardianships are required to report. In a follow up, Nancy Sylvester stated that the amount of cases that are required to report statewide could reasonably be doubled to provide a rough estimate, I think, of all adult guardianship cases. With respect to the Court Visitor Program this statistics will be important during the legislative session.

Judge Connors asked if it is possible to have a report on the total filing counts of any guardian and conservator over as long a period of time as possible, sorted by fiscal year. Judge Connors said that there is need to have a sense of whether guardianship/conservatorship filings are increasing or decreasing over time. In his opinion, we probably don't need more than a 6-10 year window.

Nancy Sylvester mentioned that currently Clayson Quigley, law clerk working with Debra Moore, District Court Administrator, is recruiting teams on the Coris rewrite project. Nancy and Karolina will follow up with Clayson.

National Guardianship Association standards
Shannon Alvey provided an overview of the National Guardianship Association's (NGA) position statement regarding "Right to Association" Legislation, as well as their position statement on supported decision-making. Shannon said that both statements could be located on the Association's website: http://www.guardianship.org.

Public Education Class Schedule
Statewide classes for professionals and caregivers with the Utah State University grant support

- Class schedule for 2016: Vernal on August 26, Logan on Sept. 30, Provo on October 21, Ogden on November 10

Annual Judicial Conference
WINGS participants will participate in the Annual Judicial conference on October 6, 2016:
- Panel "Addressing abuse, neglect and exploitation in adult guardianship cases"
- Suggested presenters: Kaye Lynn Wootton, Assistant Attorney General; Nan Mendenhall, APS; Shannon Alvey , OPG; Karolina Abuzyarova, WINGS and Court Visitor Program.

Meeting schedule in 2016: October 19, December 28.

Tab 2

IOTI Project Accomplishments
Quarterly Reporting Form

USU PO #:323711	Name of Project: Advance Life Planning and Guardianship Class for Professionals and Caregivers	Administering Agency: Administrative Office of the Courts, Utah State Courts
Principal Investigator: Karolina Abuzyarova, WINGS and Courts Visitor Program Coordinator		Reporting Period: From July 1, 2016 To September 30, 2016

50-word description of IOTI training activities and accomplishments during the reporting period:

Working Interdisciplinary Network of Guardianship Stakeholders under the leadership of the Utah State Courts held two classes in Vernal and Logan on advance life planning and guardianship. Participants were professionals from the Senior Centers, Active Re-entry, District Court, Area Agency on Aging, Nursing Homes, Hospice, Adult Protective Services, caregiver and vulnerable adult. Professionals will be able to refer and train clients on the subject.

Training Events This Reporting Period

Date	Location	Length of Time	# of Trainees	Topic	Instructor(s)	Outcomes
08.26.2016	Vernal, Utah	2 hours	19	Advance Life Planning and Guardianship	Kent Alderman, David Connors	Training of trainers/providers
09.30.2016	Logan, Utah	2 hours	34	Advance Life Planning and Guardianship	Mary Jane Ciccarello, James Brady	Training of trainers/providers
Total trained this reporting period:			53			
Total trained during this grant period (since July 1)			53			

INFORMATION ON TRAINEES

Date of Training	# Consumers or Parents of Individuals with Disabilities *	# Paraprofessionals	# Professionals	# Other (Please describe)	# Currently Employed in Disability Services	Type of Agencies Where Employed
08.26.2016	2		17			
09.30.2016			34			

*In this column, enter the number of people who attend the training in their role as a family member or because they are a person with a disability. Do not include those who are also professionals and paraprofessionals, as we count each individual only once.

Were trainees assigned any practicum or hands-on experience during this period? If so, describe briefly.

- Participants received an action plan form to fill out and take with them after the training.

What training outcomes or training competency data were collected?

- Participants were prepared to make advance life planning utilizing legal resources
- Participants can locate and refer clients to resources available on the Court website and other community resources
- Participants view guardianship as a last resort when dealing with vulnerable adults and look for less restrictive alternatives

Please attach summary data on training outcomes and trainee satisfaction.

- See summary evaluation forms for both classes in the next pages

Advance Life Planning and Guardianship Class, Vernal, August 26, 2016

Participant Feedback Questionnaire (average scores)

1-Strongly Disagree, 4 - Neutral, 7 – Strongly Agree
16 questionnaires received, 19 participants attended

1. The course adequately addressed my particular needs and concerns - **5.1 out of 7**

2. I learned ideas in this class that I believe are better than the ones I previously knew - **5.6 out of 7**

3. The quality of my work and/or life will be enhanced as a result of participating - **5.2 out of 7**

4. I will likely change my behavior as a result of participating in this course - **5.3 out of 7**

5. If I implement the ideas that I learned, other people will notice the difference **– 4.7 out of 7**

6. I gained new insight relevant to my work **– 5.7 out of 7**

7. Comments regarding presenter/method:

- Don't read presentation (paraphrase)
- Too much reading. Sorry
- Very clear and takes time for comments
- I felt like the information was presented in a systematic, organized way that held my interest – very useful
- Very knowledgeable, open to questions; I am already familiar with the guardianship/conservatorship forms, so I thought too much time was spent on forms. Other people may have found it useful
- Might be better to have a discussion and not just read slides
- Maybe more interactive training. It's hard to follow along when presenter is reading material line by line on the computer
- Kent was dynamic when not reading. A wireless mouse will allow for "remote control" of a computer /laptop for reading presentation without sitting in front of the computer. Kent needs to practice his presentation for he can manipulate the Internet in a better way. The presenter (Kent) needs a lits of what he/she want to present off the Internet, so he doesn't have to read each line of a page to decide what's next
- Knew information well
- Presenter was knowledgeable and able to answer any questions
- Nice people. Well Spoken, easily understood
- Very boring, needs not to read everything. Tell us what he knows and give examples

8. Comments regarding course setting:

- N/A
- Nice setting
- Fine
- The setting was perfect – very pleasant, free from distraction, comfortable
- Comfortable, nice
- Good
- None
- Very comfortable. The screen should have been raised a little so the entire computer screen could be seen (so all the Internet controls at the top of the page(s) could be viewed. Mitch (IT specialist at the Golden Age Center in Vernal), should have done this!
- Beautiful building
- Good. Powerpoint was visible!
- Very nice facility. It's cold in here though

9. What would you want to be different about the class:

- More interaction, presentation have a smoother flow and easier to understand
- Really appreciated the sandwiches! Don't have any recommendations for changes
- Needed Caffeine and cookies ☺
- Very informative, the training style could benefit from some changes. More interactive pr maybe just a little bit more lively training. Thank you for the helpful information!
- Admittedly, I don't like being read to. A single page or half page handout could be created with all the website information. The presenter could then go through the Internet sites easier and "cleaner". Respondent=Protected Person=Ward … Could this terminology be standardized for those who aren't legally-minded? I'm speaking about all occurrences of these terms: websites, handouts, presentations
- N/A
- Nothing. Very useful information.

Advance Life Planning and Guardianship Class, Logan, September 30, 2016

Participant Feedback Questionnaire (average scores)

1-Strongly Disagree, 4 - Neutral, 7 – Strongly Agree
20 questionnaires received, 34 participant attended

1. The course adequately addressed my particular needs and concerns - **5.85 out of 7**

2. I learned ideas in this class that I believe are better than the ones I previously knew - **6.15 out of 7**

3. The quality of my work and/or life will be enhanced as a result of participating - **5.95 out of 7**

4. I will likely change my behavior as a result of participating in this course - **5.8 out of 7**

5. If I implement the ideas that I learned, other people will notice the difference - **5.9 out of 7**

6. I gained new insight relevant to my work – **6.2 out of 7**

7. Comments regarding presenter/method:
    - Wonderful! Easy to understand
    - I appreciated the pace the presentation was delivered at. It gave me time to absorb what was being taught
    - Great power point
    - Very good!
    - Very clear and liked how answered all questions
    - Met time requirements well
    - Broad and informative
    - Very knowledgeable
    - I enjoyed the speaker
    - Good information and easy to follow. I would like the presenter to be in front of the room
    - Clear and comprehensive
    - Very knowledgeable
    - She did a great job
    - Very knowledgeable, enjoyed her presentation. Learned a lot
    - Knowledgeable, well presented
    - Mary Jane is a polished and knowledgeable presenter with the ability to adjust on the fly to the interest and level of her audience

8. Comments regarding course setting:

- The room was small and crowded. Tables for everyone could be helpful
- Maybe larger room
- I thought it was simple and basic. Very good!
- Thanks for lunch
- Bad seating
- A bigger room needed to be used
- Room was small for a number of people
- Not too bad, but quite a small space to accommodate everyone
- Too small. Thanks for lunch
- Room was too small
- Was able to see and participate easily
- Small room for the number of people
- Too small
- A little small and a lot too warm

9. What would you want to be different about the class:

- It was great! I would like to know more about what happens if guardian mismanages funds, goes against wishes
- The power point made available to class participants for future reference
- None
- Adequate seating
- This class was held during lunch. A better lunch would be appreciated. One sandwich is not lunch
- Great training! Thank you for lunch!
- More class participation/questions and answers throughout presentation
- Have handouts of slides
- Nothing. Was already familiar with the subject
- Very informative
- I would like a copy of the power point either digital or paper. Please send to davidlc@utcourts.gov. Thank you. You are all a pleasure to work with and very much appreciated

Tab 3

Cases with Guardian & Conservators Expected to Report

As of: Sep 7, 2016

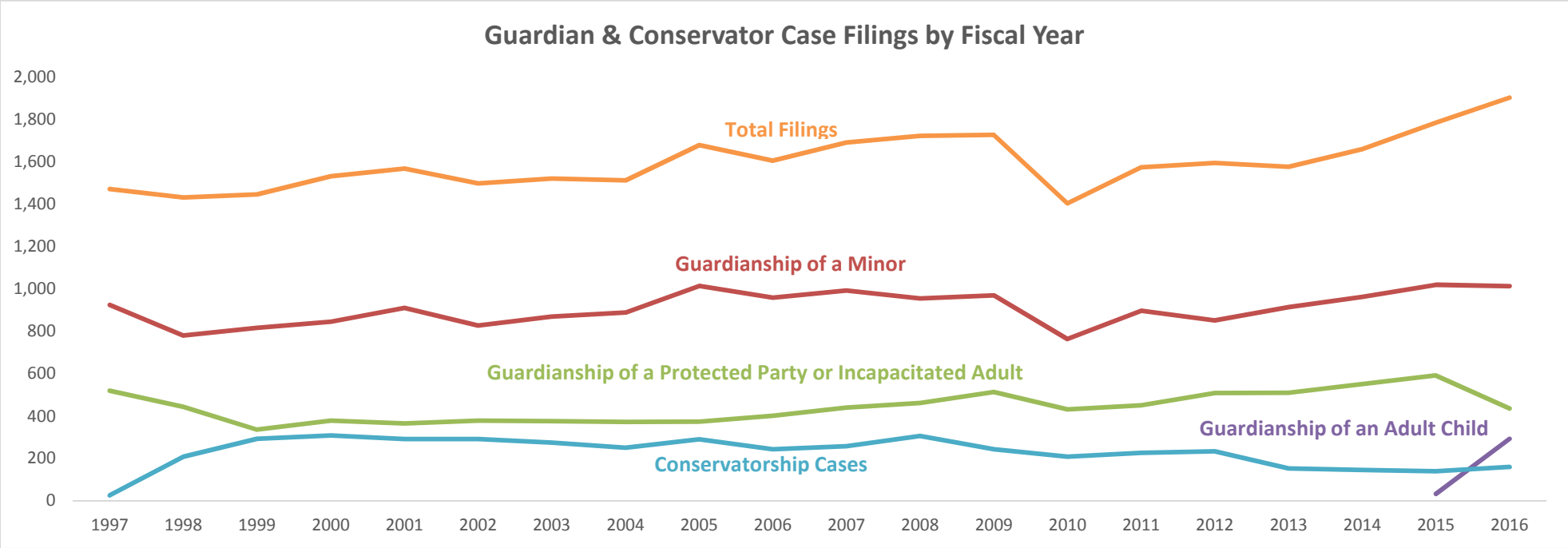
		Guardianship of Protected Party or Incapacitated Adult	Guardianship of Adult Child	Guardianship of a Minor	Conservatorship	Total
District 1	Brigham City District	23		17	2	42
	Logan District	26	1	29	8	64
	District 1	**49**	**1**	**46**	**10**	**106**
District 2	Bountiful District	2		3	2	7
	Farmington District	142	2	235	37	416
	Layton District	1		1		2
	Morgan District	3		2	1	6
	Ogden District	110	4	182	47	343
	District 2	**258**	**6**	**423**	**87**	**774**
District 3	Salt Lake City District	712	6	1315	112	2145
	Silver Summit District	15	2	10	6	33
	Tooele District	20		62	5	87
	West Jordan District			1		1
	District 3	**747**	**8**	**1388**	**123**	**2266**
District 4	American Fork District	2				2
	Fillmore District	6			1	7
	Heber City District	4		5	1	10
	Nephi District	5		2	2	9
	Provo District	293	7	165	31	496
	District 4	**310**	**7**	**172**	**35**	**524**
District 5	Beaver District	3		2	1	6
	Cedar City District	19	2	47	9	77
	St. George District	97	1	81	18	197
	District 5	**119**	**3**	**130**	**28**	**280**
District 6	Junction District			2		2
	Kanab District	1		4		5
	Loa District	1		1	1	3
	Manti District	3		16	2	21
	Panguitch District	4		7		11
	Richfield District	9	1	22	2	34
	District 6	**18**	**1**	**52**	**5**	**76**
District 7	Castle Dale District	7		9	8	24
	Moab District	5		4		9
	Monticello District	6		6		12
	Price District	17		34	7	58
	District 7	**35**		**53**	**15**	**103**
District 8	Duchesne District	3		2	3	8
	Roosevelt District	6		12	9	27
	Vernal District	13		11	7	31
	District 8	**22**		**25**	**19**	**66**
Statewide Total		**1558**	**26**	**2289**	**322**	**4195**

*Includes any case type where a Guardian or Conservator is scheduled to report

Guardian & Conservator Case Filings by Fiscal Year

Case Filings from FY1997 to FY2016 as of Sep 8, 2016

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Guardianship Cases	1,445	1,224	1,153	1,223	1,276	1,206	1,246	1,262	1,388	1,361	1,433	1,417	1,484	1,196	1,348	1,360	1,424	1,514	1,645	1,743
Guardianship of a Minor	925	780	817	845	911	827	870	889	1,014	959	993	955	970	764	897	851	914	963	1,020	1,013
Guardianship of a Protected Party or Incapacitated Adult	520	444	336	378	365	379	376	373	374	401	440	462	514	432	451	509	510	551	592	437
Guardianship of an Adult Child										1									33	293
Conservatorship Cases	26	208	293	309	292	292	275	251	291	244	258	306	243	208	226	234	153	146	140	160
Total Filings	**1,471**	**1,432**	**1,446**	**1,532**	**1,568**	**1,498**	**1,521**	**1,513**	**1,679**	**1,605**	**1,691**	**1,723**	**1,727**	**1,404**	**1,574**	**1,594**	**1,577**	**1,660**	**1,785**	**1,903**



Tab 4

NATIONAL GUARDIANSHIP ASSOCIATION

Standards of Practice

Adopted 2000
Fourth Edition - 2013

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National Guardianship Association

www.guardianship.org • info@guardianship.org • 877-326-5992

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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, but the basic issues have been, and remain, imprecise and difficult to define for a national, membership-based organization. A basic philosophical element complicating the process has been the need to strike a consistent balance between standards that represent an ideal and those that recognize practical limitations, whether for a family guardian or for a professional guardian.

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

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

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

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

This document embodies practices and standards from a number of professional sources. As such, it sometimes makes unavoidable use of legal and medical "terms of art" where they would commonly and most accurately be used by professionals who work in the particular area. In addition, the field of guardianship itself makes use of terms that vary widely from state to state. "Guardian" and “person under guardianship” or "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 guardian of the person, guardian of the estate or guardian of the person and estate, depending on the standard being addressed.

In this work we have drawn on a number of collective sources. First and foremost, have been NGA members who have contributed extensive time and energy and valuable input into the development of these standards. The *Model Code of Ethics for Guardians*, developed by Michael D. Casasanto, Mitchell Simon, and Judith Roman and adopted by the NGA, has formed the foundation from which the standards were developed. Other very important sources that helped in the creation of our standards of practice are the U.S. Administration on Aging, the AARP, the Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, Washington, California, Illinois, Minnesota, and Michigan. We thank everyone listed above and others for their ongoing commitment to the profession of guardianship.

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

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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.

Please be advised that any entity adopting these standards should give attribution to NGA.

Check the NGA Website (www.guardianship.org) for the most current edition of the *NGA Standards of Practice*.

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NGA Standards of Practice

✪ NGA 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 who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians.

III. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.

IV. Every guardian should be held to the same standards, regardless of familial relationship, except a guardian with a higher level of relevant skills shall be held to the use of those skills.

✪ 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 all decisions and actions shall be consistent with that court order.

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.

IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.

V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.

VI. 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. Ways that guardians of the person and of the estate keep the court informed about the well-being of the person and the status of the estate include but not limited to:

   A. Personal care plans and financial plans,

   B. Inventories and appraisals, and

   C. Reports and accountings.

VII. The guardian shall use available technology to:

   A. File the general plan, inventory and appraisal, and annual reports and accountings,

   B. Access responsible education and information about guardianships, and

   C. Assist in the administration of the estate.

VIII. The guardian shall promptly inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian's authority.

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

I. The guardian shall treat the person under guardianship 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 appointment of the guardian.

III. The guardian may not engage in sexual relations with a person unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.

IV. The guardian shall seek ongoing education concerning the following:

A. Person-centered planning,

B. Surrogate decision-making,

C. Responsibilities and duties of guardians,

D. Legal processes of guardianship, and

E. State certification of guardians.

✪ NGA Standard 4 - The Guardian's Relationship with Family Members and Friends of the Person

I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.

A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.

B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

II. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence.

III. When disposing of the person's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).

IV. The guardian shall make reasonable efforts to preserve property designated in the person's will and other estate planning devices executed by the person.

V. The guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.

VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The guardian may request and consider family input when making medical decisions.

Note: Refer to Standard 11 as it relates to confidentiality issues.

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✪ 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 on behalf of the person.

II. The guardian shall develop and maintain a working knowledge of the services, providers and facilities available in the community.

III. The guardian shall stay current with changes in community resources to ensure that the person under guardianship receives high-quality services from the most appropriate provider.

IV. A guardian who is not a family member guardian may not provide direct service to the person. The guardian shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.

V. The guardian shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person.

VI. The guardian shall make a good faith effort to cooperate with other surrogate decision-makers for the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee.

VII. The guardian may consider mentoring new guardians.

✪ NGA Standard 6 – Informed Consent

I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent.

II. 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.

III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.

IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.

V. In evaluating each requested decision, the guardian shall do the following:

A. Have a clear understanding of the issue for which informed consent is being sought,

B. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,

C. Determine the conditions that necessitate treatment or action,

D. Encourage and support the person in understanding the facts and directing a decision,

E. Maximize the participation of the person in making the decision,

F. Determine whether the person has previously stated preferences in regard to a decision of this nature,

G. Determine why this decision needs to be made now rather than later,

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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, if necessary,

K. Obtain information or input from family and from other professionals, and

L. Obtain written documentation of all reports relevant to each decision.

✪ NGA Standard 7 – Standards for Decision-Making

I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.

II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.

A. First, the guardian shall ask the person what he or she wants.

B. Second, if the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.

C. Third, only when the person, even with assistance, cannot express his or her goals and preferences, shall the guardian seek input from others familiar with the person to determine what the individual would have wanted.

D. Finally, only when the person's goals and preferences cannot be ascertained, may the guardian make a decision in the person's best interest.

III. 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 and preferences even with support.

IV. 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 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 needs of the person.

C. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

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✪ 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 personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.

II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety.

III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.

IV. The following guidelines apply in the determination of the least restrictive alternative:

A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.

B. The guardian shall strive to know the person's goals and preferences.

C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

✪ NGA Standard 9 – Self-Determination of the Person

I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.

II. The guardian shall attempt to maximize the self-reliance and independence of the person.

III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity 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 strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.

V. The guardian shall wherever possible, seek to ensure that the person leads the planning process; and at a minimum to ensure that the person participates in the process.

✪ NGA Standard 10 – The Guardian's Duties Regarding Diversity and Personal Preferences of the Person

I. The guardian shall determine the extent to which the person under guardianship identifies with particular ethnic, religious, and cultural values. To determine these values, the guardian shall also consider the following:

A. The person's attitudes regarding illness, pain, and suffering,

B. The person's attitudes regarding death and dying,

C. The person's views regarding quality of life issues,

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D. The person's views regarding societal roles and relationships, and

E. The person's attitudes regarding funeral and burial customs.

II. The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, that the person is not victimized, and that an environment conducive to this expression in privacy is provided.

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 health and well-being of the person.

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 lifestyle and ability, while considering the preferences of the person. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.

D. The guardian shall protect the rights of the person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the person's values and customs.

✪ NGA Standard 11 - Confidentiality

I. The guardian shall keep the affairs of the person under guardianship 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, as defined by the person, unless it will substantially harm the person.

V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person 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 under guardianship unless the order of appointment provides otherwise:

A. To see that the person is living in the most appropriate environment that addresses the person's goals, needs, and preferences.

1. The guardian shall have a strong priority for home or other community-based settings, when not inconsistent with the person's goals and preferences.

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2. The guardian shall authorize moving a person to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the person and serves the overall best interest of the person.

3. The guardian shall consider the proximity of the setting to those people and activities that are important to the person when choosing a residential setting.

4. At a minimum the guardian shall report to a court before a move to a more restrictive residential setting, and the justification for the move.

5. When the guardian considers involuntary or long-term placement of the person in an institutional setting, the bases of the decision shall be 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.

B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the person.

C. To make reasonable efforts to secure for the person medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the person's potential for self-reliance and independence.

D. To keep the affairs of the person confidential, except when it is necessary to disclose such affairs for the best interests of the person.

E. To seek specific judicial authority when a civil commitment, the dissolution of a marriage, or another extraordinary circumstance is being addressed.

F. To file with the court, on a timely basis but not less often than annually, all reports required by state statute, regulations, court rule, or the particular court pursuant to whose authority the guardian was appointed.

G. To adhere to the requirements of Standard 17 - Duties of the Guardian of the Estate and Standard 18 - Guardian of the Estate: Initial and Ongoing Responsibilities, to the extent that the guardian of the person has been authorized by the court to manage the person's property.

H. To petition the court for limitation or termination of the guardianship when the person no longer meets the standard pursuant to which the guardianship was imposed, or when there is an effective alternative available.

I. To promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statutes.

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

I. With the proper authority, initial steps after appointment as guardian are as follows:

A. The guardian shall address all issues of the person under guardianship that require 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 to the person the role of the guardian;

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2. Explain the rights retained by the person;

3. Assess the person's physical and social situation, the person's educational, vocational, and recreational needs, the person's preferences, and the support systems available to the person; and

C. Attempt to gather any missing necessary information regarding the person.

II. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The guardian shall:

A. Obtain an evaluation of the person's condition, treatment, and functional status 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.

1. Obtain a psychological evaluation, if appropriate.

2. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts.

B. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person.

III. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs and preferences of the person.

A. The plan shall emphasize a "person-centered philosophy."

B. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs and preferences of the person.

C. The plan must also 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 changing status of the person.

D. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.

E. The plan must be based on a multidisciplinary functional assessment.

F. The plan must be updated no less often than annually.

IV. 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, medical coverage, physician, diagnoses, medications, and allergies to medications;

B. All legal documents involving the person;

C. Advance directives;

D. A list of key contacts;

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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 client and collateral contacts, including the date, time, and activity;

H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the 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. Documentation of the person's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and

M. A photograph of the person.

V. The guardian shall visit the person no less than monthly.

A. 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.

B. The guardian shall maintain substantive communication with service providers, caregivers, and others attending to the person.

C. The guardian shall participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the person.

D. The guardian shall require that each service provider develop an appropriate service plan for the person and shall take appropriate action to ensure that the service plans are being implemented.

E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the person at the place of residence and at any program site to ascertain that the care plan is being properly followed.

F. The guardian shall advocate on behalf of the person with staff in an institutional setting and other 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 care is found to be deficient.

G. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the individual’s current goals, needs and preferences, including but not limited to:

1. Evaluating the plan;

2. Enforcing residents’ rights, legal and civil rights; and

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3. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person.

VI. 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.

VI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.

VII. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.

✪ NGA Standard 14 – Decision-Making About Medical Treatment

I. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship.

II. The guardian shall ensure that all medical care for the person is appropriately provided and that the person is treated with dignity.

III. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care 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 health care options and the risks and benefits of each option, and

D. Encourage and support the individual in understanding the facts and directing a decision.

V. Use the substituted judgment standard with respect to a health care decision unless the guardian cannot determine person's prior wishes.

VI. The guardian shall determine whether the person, before the appointment of a guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by the person recorded in medical charts. On finding such documents, the guardian shall inform the court and other interested parties of the existing health care documents.

VII. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian.

VIII. If the person's preferences are unknown and unascertainable, the guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the

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person's welfare, to determine the person's best interests, which determination shall include consideration of consequences for others that an individual in the person's circumstances would consider.

IX. 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 may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria listed in Standards 6 and 7.

X. In the event of an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7, within the time allotted by the emergency.

XI. 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.

XII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.

XIII. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.

XIV. 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. Psychosurgery,

B. Experimental treatment,

C. Sterilization,

D. Abortion, and

E. Electroshock therapy.

II. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care, unless not in accordance with the person's preferences and values.

III. The guardian shall keep individuals that are 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 under guardianship. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the person.

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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 needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

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 an impropriety or conflict of interest include the following:

A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.

1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.

2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.

3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.

B. A guardianship program must be a freestanding entity and must not be subject to undue influence.

C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.

D. The guardian may not be in a position of representing both the person and the service provider.

E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.

F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.

G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.

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H. The guardian shall neither solicit nor accept incentives from service providers.

I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.

J. 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.

K. The guardian may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to the person under the guardianship, and shall disclose such transactions to interested parties and obtain prior court approval.

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

I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.

II. When making decisions the guardian shall:

A. Give priority to the goals, needs and preferences of the person, and

B. Weigh the costs and benefits to the estate.

III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.

IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.

V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.

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 his or her actions will be open to scrutiny at all times.

VIII. The guardian shall provide competent management of the person's property and, shall supervise all income and disbursements of the estate.

IX. The guardian shall manage the estate only for the benefit of the person.

X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.

XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.

XII. 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.

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XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.

XIV. The guardian shall employ prudent accounting procedures when managing the estate.

XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.

XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.

XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statute.

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

I. With the proper authority, the initial steps after appointment as guardian are as follows:

A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.

1. The guardian shall ascertain the income, assets, and liabilities of the person.

2. The guardian shall ascertain the goals, needs and preferences of the person.

3. The guardian shall coordinate and consult with others close to the person.

B. The guardian shall meet with the person under guardianship as soon after the appointment as feasible. At the first meeting the guardian shall:

1. Communicate to the person the role of the guardian;

2. Outline the rights retained by the person and the grievance procedures available;

3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity; and

4. Attempt to gather from the person any necessary information regarding the estate.

II. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.

III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.

A. Guardian shall value the well-being of the person over the preservation of the estate.

B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.

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C. The financial plan shall emphasize a “person-centered philosophy”.

II. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.

III. The guardian shall obtain all public and insurance benefits for which the person is eligible.

IV. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.

V. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.

VI. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.

VII. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.

VIII. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.

IX. The guardian may monitor, provide oversight or manage the personal allowance of the person.

X. 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 real or personal property of the person under guardianship without judicial, administrative, or other independent review.

II. In the absence of reliable evidence of the person's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the person, or an interest in that property, unless doing so is in the best interest of the person.

III. In considering whether to dispose of the person's 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 need or 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,

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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, and

K. The benefits versus the liability and costs of maintaining the property,

IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.

V. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

✪ NGA Standard 20 – Conflict of Interest: Estate, Financial, and Business 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 needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

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

A. The guardian may not commingle personal or program funds with the funds of the person, except as follows:

1. This standard does not prohibit the guardian from consolidating and maintaining a person's funds in joint accounts with the funds of other persons.

2. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.

3. When an individual or organization serves several persons, it may be more efficient and more cost-effective to pool the individual estate funds in a single account. In this manner, banking fees and costs are distributed, rather than being borne by each estate separately.

4. If the court allows the use of combined accounts, they should be permitted only where the guardian has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each 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 himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.

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 objects of worth from the person's estate unless specific prior 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 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.

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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 under guardianship to develop or regain the capacity to manage his or her 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 he or she was found incapacitated by the court,

B. When less restrictive alternatives exist,

C. When the person expresses the desire to challenge the necessity of all or part of the guardianship,

D. When the person has died, or

E. When the guardianship no longer benefits the person.

✪ NGA Standard 22 – Guardianship Service Fees

I. Guardians are entitled to reasonable compensation for their services.

II. The guardian shall bear in mind at all times the responsibility to conserve the 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 shall:

A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action,

B. Disclose a projection of annual fiduciary fees within 90 days of appointment,

C. Disclose fee changes,

D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment, and

E. Disclose a detailed explanation for any claim for fiduciary fees.

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V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.

VI. A guardian may seek payment of fiduciary 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.

VII. Factors to be considered in determining reasonableness of the guardian's fees include:

A. Powers and responsibilities under the court appointment;

B. Necessity 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 expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment;

E. The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken;

F. The conditions or circumstances of the work, 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 have rendered the service better, cheaper, faster;

H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs;

I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate;

J. The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter;

K. The degree of financial or professional risk and responsibility assumed;

L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement; and

M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest.

VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:

A. Date and time spent on a task,

B. Duty performed,

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C. Expenses incurred,

D. Collateral contacts involved, and

E. Identification of 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 each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.

II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.

A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.

B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

✪ NGA Standard 24 – Quality Assurance

I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.

II. The independent review shall occur periodically, but no less often than every two years, and must include a review of a representative sample of cases.

III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the person and with the individual providing direct service to the person.

IV. An independent review may be obtained from:

A. A court monitoring system,

B. An independent peer, or

C. An CGC national master guardian.

V. The quality assurance review does not replace other monitoring requirements established by the court.

✪ NGA Standard 25 – Sale or Purchase of a Guardianship Practice

I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.

II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.

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III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:

A. A professional guardian considering the sale of a guardianship practice shall ensure that the persons are considered in the sale process and that guardianship responsibilities continue to be met during the transition.

B. The professional guardian shall require documentation of the purchaser's references pertaining to qualifications to serve as guardian, as defined by state statutes.

C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons 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, and to other interested parties, even if not required by state statutes.

F. Consideration should be given to requesting that the court appoint a guardian ad litem, or another third party reviewer, to protect the interests of the persons.

G. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons during the period of the sale and transfer of ownership.

H. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.

I. The fees charged to existing persons may not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.

IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice may not be considered a sale or purchase under this standard.

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Definitions

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

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

ARM'S-LENGTH RELATIONSHIP - A relationship between two agencies or organizations, or two divisions or departments within one agency, 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.

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

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

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

FREESTANDING ENTITY - An agency or organization that is independent from all other agencies or organizations
FUNCTIONAL ASSESSMENT - A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

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GUARDIAN – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual 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 an individual 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 individual.

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

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

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

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

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

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

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 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 UNDER GUARDIANSHIP OR SIMPLY "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.

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PERSON-CENTERED PLANNING[1] **-** 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 unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- 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.

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

[1] 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 (April 2012). *See also* John O'Brien & Connie Lyle O'Brien, eds., *A Little Book About Person Centered Planning*, Inclusion Press (2000).

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NGA and CGC Qualifications for Court-Appointed Guardians

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

Guidelines:

A corporate guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become 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 he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective 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 care of the person.

Guidelines:

A family guardian:

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

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

Guidelines:

An individual professional guardian:

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

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

2. Shall follow the *Model Code of Ethics for Guardians*.

3. Shall follow the *NGA Standards of Practice*.

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

Guidelines:

A public guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.

2. Shall follow the *NGA Standards of Practice*.

3. Should strive to have decision-making staff become national registered guardians and national master guardians.

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 *Model Code of Ethics for Guardians*.

3. Shall follow the *NGA Standards of Practice*.

4. Should strive to become a national master guardian.

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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 his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval.

Guidelines:

A volunteer guardian:

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

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