

# North Dakota Guardianship

## STANDARDS OF PRACTICE for ADULTS

All NDG standards apply to professional guardians, corporate guardians or family guardians unless otherwise indicated.

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## NDG Standard 1

### **Applicable Law**

The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships. The guardian should be guided by professional codes of ethics and standards of practice for guardians. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment. N.D.C.C. Chapters 30.1-26, 30.1-28 and 30.1-29 (Conservator of estate). This law applies to persons age 18 or older.

## NDG Standard 2

### **The Guardian's or Conservator's Relationship to the Court**

- I. Guardianships are established through a legal process and are subject to the supervision of the court.
- II. The guardianship court order determines the authority and the limitations of the guardian.
- III. The guardian shall know the extent of the powers granted by the court and shall not act beyond those powers.
- IV. The guardian shall clarify with the court any questions about the directives of the order or directions from the court before taking action based on the court order.
- V. The guardian must obtain court authorization for actions that are subject to court approval.
- VI. The guardian must submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but not less often than annually.
- VII. All payments to the guardian from the assets of the ward shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.

## NDG Standard 3

### **The Guardian's or Conservator's Professional Relationship with the Ward**

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

## NDG Standard 4

### **The Guardian's or Conservator's Relationship with Family Members and Friends of the Ward**

- I. The guardian shall recognize the value of family and friends to the quality of life of the ward. The guardian shall encourage and support the ward in maintaining contact with family members and friends when doing so benefits the ward.
- II. The guardian must assist the ward in maintaining or reestablishing relationships with family and friends, except when doing so would not be of benefit to the ward.

- III. When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).
- IV. The guardian must make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward.
- V. The guardian may maintain communication with the ward's family and friends regarding significant occurrences that affect the ward when that communication would benefit the ward.
- VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the ward. The guardian may request and consider family input when making medical decisions.

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

#### NDG Standard 5

##### **The Guardian's or Conservator's Relationship with Other Professionals and Providers of Service to the Ward**

- I. The guardian shall treat all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the ward.
- II. The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community.
- III. The guardian must stay current with changes in community resources to ensure that the ward receives high-quality services from the most appropriate provider.
- IV. A guardian who is not a family member guardian shall not provide direct service to the ward. The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. Exceptions for publicly funded Home and Community Based Services would need approval by Department of Human Services Medical Services Program Administrator.
- V. The guardian shall engage the services of professionals (e.g. attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward.

#### NDG Standard 6

##### **Informed Consent**

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

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

#### NDG 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 (see Standard 6).
- II. **SUBSTITUTED JUDGMENT**
  - A. Substituted Judgment is the principle of decision-making that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the ward would have made when competent.
  - B. Substituted Judgment promotes the underlying values of self-determination and well being of the ward.
  - C. Substituted Judgment is not used when following the ward's wishes would cause substantial harm to the ward or when the guardian cannot establish the ward's prior wishes.
- III. **BEST INTERESTS OF THE WARD**
  - A. Best Interest is the standard of decision-making the guardian should use when the ward has never had capacity or when the ward's wishes cannot be determined.
  - B. The Best Interest standard requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the ward.
  - C. The Best Interest standard is used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.
  - D. Best Interest decisions include consideration of the ward's current and previously expressed wishes.

## NDG Standard 8

### **Least Restrictive Alternative**

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the needs of the ward while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the ward and maintaining the ward's protection and safety.
- III. The guardian shall make individualized decisions; the least restrictive alternative for one ward might not be the least restrictive alternative for another ward.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
  - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
  - B. The guardian shall strive to know the ward's preferences.
  - C. The guardian shall consider assessments of the ward's needs as determined by specialists. This may include an independent assessment of the ward's functional ability, the ward's health status, and the ward's care needs.

## NDG Standard 9

### **Self-Determination of the Ward**

- I. The guardian shall provide the ward with every opportunity to exercise those individual rights that the ward might be capable of exercising as they relate to the care of the ward's person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the ward.
- III. The guardian shall understand and advocate for person-centered planning and the least restrictive alternative on behalf of the ward.
- IV. The guardian shall encourage the ward to participate, to the maximum extent of the ward's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the ward is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

## NDG Standard 10

### **The Guardian's or Conservator's Duties Regarding Diversity and Personal Preference of the Ward**

- I. Ethnic, religious, and cultural values:
  - A. The guardian shall determine the extent to which the ward identifies with particular ethnic, religious, and cultural values.
  - B. To determine these values, the guardian shall also consider the following:

1. The ward's attitudes regarding illness, pain, and suffering.
2. The ward's attitudes regarding death and dying.
3. The ward's views regarding quality of life issues.
4. The ward's views regarding societal roles and relationships.
5. The ward's attitudes regarding funeral and burial customs.

II. Sexual expression:

- A. The guardian shall acknowledge the ward's right to interpersonal relationships and sexual expression. The guardian must take steps to ensure that a ward's sexual expression is consensual, that the ward is not victimized, and that an environment conducive to this expression in privacy is provided.
- B. The guardian shall ensure that the ward has information about and access to accommodations necessary to permit sexual expression to the extent the ward desires and to the extent the ward possesses the capacity to consent to the specific activity.
- C. The guardian shall take reasonable measures to protect the health and self-being of the ward.
- D. The guardian shall ensure that the ward is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the ward the level of protection appropriate to the ward's lifestyle and ability, while considering the preferences of the ward. The guardian shall encourage the ward, where possible and appropriate, to participate in the choice of a birth control method.
- E. The guardian shall protect the rights of the ward with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the ward's values and customs.

NDG Standard 11

**Confidentiality**

- I. The guardian shall keep the affairs of the ward confidential.
- II. The guardian shall respect the ward's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the ward in communicating sensitive information with the ward's family when the disclosure would benefit the ward.
- V. The guardian may refuse to disclose sensitive information about the ward where disclosure would be detrimental to the well being of the ward or would subject the ward's estate to undue risk. Such a refusal to disclose information must be reported to the court.

## NDG Standard 12

### **Duties of the Guardian of the Person**

The guardian shall have the following duties and obligations to the ward unless the order of appointment provides otherwise, such as issues related to a limited guardianship – the guardian must always be aware of the specific limitations of authority:

- A. To see that the ward is living in the most appropriate environment that addresses the ward's wishes and needs.
  - 1. The guardian shall authorize moving a ward to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the ward, and serves the overall best interest of the ward.
  - 2. When the guardian considers involuntary or long-term placement of a ward in an institutional setting, the basis of the decision shall be to minimize the risk of substantial harm to the ward, to obtain the most appropriate placement possible, and to secure the best treatment of the ward.
- B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the ward.
- C. To make reasonable efforts to secure for the ward medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the ward's potential for self-reliance and independence. The guardian's efforts must be limited to only those areas in which the guardian has authority.
- D. To keep the affairs of the ward confidential, except when it is necessary to disclose such affairs for the best interests of the ward.
- E. To seek specific judicial authority when a voluntary commitment is being addressed. No guardian may voluntarily admit a ward to a mental health facility or state institution for a period of more than forty-five (45) days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of N.D.C.C. Chapter 30.1-28-12, the guardian may readmit a ward to a mental health facility or a state institution within sixty (60) days of discharge from the institution, if the original admission to the facility or institution had been authorized by the court.
- F. To ensure, except upon specific findings of the court, that the ward is not deprived of the following legal rights: to vote, to seek to change marital status, to obtain or retain a motor vehicle license, or to testify in any judicial or administrative proceedings. N.D.C.C. Chapter 30.1-28-04(3).
- G. To file with the court, on a timely basis but not less often than annually, all reports required by N.D.C.C. Section 30.1-28-12.
- H. To adhere to the requirements of Standard 17 – Duties of the Guardian of the Estate and Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities, to the extent that the guardian of the person has been authorized by the court to manage the ward's property.

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

#### NDG Standard 13

##### **Guardian of the Person: Initial and Ongoing Responsibilities**

- I. With the proper authority, initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the ward that require immediate action. Within forty-eight (48) hours of appointment, the guardian shall notify relevant agencies and individuals of the appointment of a guardian.
  - B. The guardian shall meet with the ward as soon after the appointment as is feasible. At the first meeting, the guardian shall:
    1. Communicate to the ward the role of the guardian;
    2. Explain the rights retained by the ward;
    3. Begin assessing the ward's physical and social situation, the ward's educational, vocational, and recreational needs, the ward's preferences, and the support systems available to the ward; and
    4. Attempt to gather any missing necessary information regarding the ward.
  - C. After the first meeting with the ward, the guardian shall complete assessment and/or collection of collateral documentation within 30 days.
    1. Physician's evaluation: The ward's treating physician shall be asked to complete a medical evaluation if one was not completed during the guardianship petition process, provided this is not financially burdensome to the ward. The evaluation shall include an assessment of the ward's condition, treatment, and functional status.
    2. Psychological evaluation, if appropriate.
    3. An inventory of health care directives. Such statements of intent would include, health care directives, powers of attorney, living wills, and organ donation statements.
- II. The guardian shall establish contact with and develop a regular pattern of communication with the guardian of the estate or other fiduciary for the ward, if such a person exists.
- III. Section III of NDG Standard 13 does not apply to family guardians. If case coordination services are not available through any other resource, the guardian shall develop and monitor a written guardianship plan setting forth short-term and long-term goals for meeting the ward's needs that are addressed in the guardianship order. When completing the guardianship plan, the guardian must have complete knowledge and understanding of any limits of the guardian's authority. The guardianship plan should be limited to only those areas in which the guardian has authority.
  - A. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward if those needs exist.

- B. The plan must also address whether the ward's finances and budget are in line with the services the ward needs and are flexible enough to deal with the changing status of the ward.
  - C. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
  - D. The plan must be based on a multidisciplinary functional assessment.
  - E. The plan must be updated no less often than annually.
- IV. The corporate or professional guardian shall maintain a separate file for each ward. The file must include, at a minimum, the following information and documents:
- A. The ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
  - B. All legal documents involving the ward;
  - C. Advance directives;
  - D. A list of key contacts;
  - E. A list of service providers, contact information, a description of services provided to the ward, and progress/status reports;
  - F. If the ward is responsible for taking his or her own medications without any assistance from a service provider, the guardian will maintain a list of all over-the-counter and prescribed medication the ward is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication. If a service provider is responsible for monitoring the ward's medications, the file will contain the necessary contact information so that medication information can be accessed immediately 24 hours per day;
  - G. Documentation of all client and collateral contacts, including the date, time, and activity;
  - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward;
  - I. The guardianship plan or primary service provider plan;
  - J. An inventory, if required by court;
  - K. Assessments regarding the ward's past and present medical, psychological, and social functioning;
  - L. Documentation of the ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
  - M. A photograph of the ward.

It is recommended that family guardians maintain information contained in the above list.

- V. The guardian shall visit the ward monthly. Exceptions may apply for family guardians if travel is burdensome in terms of excessive miles or if travel is limited due to the health of the guardian. If monthly visits are not possible, family guardians shall contact the ward and the ward's service providers by telephone or e-mail on a monthly basis.
- A. The guardian shall assess the ward's physical appearance and condition and assess the appropriateness of the ward's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
  - B. The guardian must maintain substantive communication with service providers, caregivers, and others attending to the ward.

- C. The guardian must participate, in person or by telephone conference call, in care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the ward.
- D. If case coordination services are provided by the primary service provider, the guardian will be an active participant in the development of the ward's service plan. This plan will be reviewed and updated no less often than annually.
- E. The guardian shall regularly examine charts, notes, logs, evaluations, and other documents regarding the ward at the place of residence and at any program site to ascertain that the care plan is being properly followed. Again, exceptions may be allowed for family guardians.
- F. The guardian shall advocate on behalf of the ward with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the ward, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.

#### NDG Standard 14

##### **Decision-Making About Medical Treatment**

- I. The guardian shall promote, monitor, and maintain the ward's health and well-being.
- II. The guardian shall ensure that all medical care necessary for the ward is appropriately provided.
- III. The guardian shall determine whether the ward, after the appointment of a guardian, executed any advance directives, such as a health care directive, power of attorney, living will, or any other specific written or oral declaration of intent. On finding such documents, the guardian shall consider the ward's wishes in the decision-making process. The guardian shall inform the court and other interested parties of the existing documents and provide copies of those documents.
- IV. Absent an emergency or the execution of a health care directive, power of attorney, living will, or other advance directive declaration of intent that clearly indicates the ward's wishes with respect to medical intervention, a guardian who has proper authority may not grant or deny authorization for medical intervention until he or she has given careful consideration to the criteria listed in Standard 6 – Informed Consent and Standard 7 – Standards for Decision-Making.
- V. In the event of an emergency, a guardian who has proper authority shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria listed in Standards 6 and 7, within the time allotted by the emergency.
- VI. If taking time will not jeopardize the life of the ward, the guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the ward. The guardian shall obtain a second opinion from an independent physician, provided that it is not financially burdensome to the ward.
- VII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.

- VIII. The guardian may speak directly with the treating or attending physician before authorizing or denying any medical treatment.
- IX. The guardian shall not authorize extraordinary procedures without prior authorization from the court. Extraordinary procedures may include, but are not limited to, the following medical interventions:
  - A. Psychosurgery
  - B. Experimental treatment
  - C. Sterilization
  - D. Abortion

N.D.C.C. Chapter 30.1-28-12.

NDG Standard 15

#### **Decision-Making About Withholding and Withdrawal of Medical Treatment**

- I. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the ward.
- II. It is recognized that there are circumstances in which it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of the ward.
- III. If the ward has expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, the guardian shall follow the wishes of the ward. However, the guardian may determine that it is not in the ward's best interest to follow the ward's wishes in specific situations: the guardian has determined that the ward is not able to provide informed consent; the provision of continued treatment becomes more burdensome than beneficial and prolongs death rather than preserving life; or if death is imminent and irreversible and continued treatment offers little or no hope of recovery. If the ward's current wishes are in conflict with wishes previously expressed when competent, the guardian shall have this ethical dilemma reviewed by an ethics committee.
- IV. When making this decision on behalf of the ward, the guardian shall gather and document information as outlined in Standard 6 – Informed Consent.

NDG Standard 16

#### **Conflict of Interest: Ancillary and Support Services**

- I. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward.
- II. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
  - A. A guardian who is not a family guardian shall not directly provide housing, medical, legal, or other direct services to a ward. The guardian shall coordinate and assure the provision of all necessary services to the ward rather than providing those services directly. Exceptions for publicly funded Home and Community Based services would

need approval by Department of Human Services Medical Services Program Administrator.

- B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
- C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
- D. The guardian shall not be in a position of representing both the ward and the service provider.
- E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
- F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the ward.
- G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
- H. The guardian shall not solicit or accept incentives from service providers.
- I. The guardian shall consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.
- J. A guardian who is an attorney or employs attorneys may provide legal services to a ward only when doing so best meets the needs of the ward and is approved by the court following full disclosure or 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. The guardian who is an attorney shall abide by the Model Code of Ethics for Guardians and the ND Standards of Practice.

#### NDG Standard 17

##### **Duties of the Guardian or Conservator of the Estate**

- I. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- II. The guardian shall provide competent management of the ward's property and shall supervise all income and disbursements of the estate.
- III. The guardian shall manage the estate only for the benefit of the ward.
- IV. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- V. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.

- VI. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the ward and shall defend against actions that would result in a loss of estate assets.
- VII. The guardian shall employ prudent accounting procedures when managing the estate.
- VIII. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.
- IX. The guardian shall apply the Prudent Person Rule and the Prudent Investor Rule when managing the estate.

#### NDG Standard 18

#### **Guardian or Conservator of the Estate: Initial and Ongoing Responsibilities**

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

- IX. The guardian shall oversee the disposition of the ward's assets to qualify the ward for any public benefits program.
- X. On the termination of the guardianship or the death of the ward, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
- XI. The guardian may monitor or manage the personal allowance of the institution-based ward.
- XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the ward.

NDG Standard 19

**Property Management**

The guardian shall obtain Court approval for sale of real property and notify the Court on an annual basis of the sale of all real and personal property.

- I. The guardian or conservator shall obtain Court approval for sale of real property and notify the Court on an annual basis of the sale of all real and personal property.
- II. The guardian or conservator should not sell, encumber, convey, or otherwise transfer property of the ward unless it is in the best interest of the ward and the ward's views have been taken into consideration.
- III. **Guidelines:** In considering whether it is in the best interest of the ward to dispose of the ward's property, the guardian or conservator shall consider the following:
  - A. Whether disposing of the property will benefit or improve the life of the ward.
  - B. The likelihood that the ward will need or benefit from the property in the future.
  - C. The previously expressed or current desires of the ward with regard to the property.
  - D. The tax consequences of the transaction.
  - E. The impact of the transaction on the ward's entitlement to public benefits.
  - F. The condition of the entire estate.
  - G. The ability of the ward to maintain the property.
  - H. The availability and appropriateness of alternatives to the disposition of the property.
  - I. The likelihood that property may deteriorate or be subject to waste.
  - J. The benefits versus the liability and costs of maintaining the property.
- IV. The guardian or conservator shall consider the necessity for an independent appraisal of real and personal property.
- V. The guardian or conservator must provide for insurance coverage, as appropriate, for property in the estate.

NDG Standard 20

**Conflict of Interest: Estate, Financial, and Business Services**

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

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

- II. A. **Guidelines:** Rules relating to specific situations that might create an impropriety or conflict of interest include the following:
  - 1. This standard does not prohibit the guardian from consolidating and maintaining a ward's funds in joint accounts with the funds of other wards.
  - 2. If the guardian maintains joint accounts, separate and complete accounting of each ward's funds shall also be maintained by the guardian.
  - 3. When an individual or organization serves several wards, it may be more efficient and more cost-effective to pool the individual ward's funds in a single account. In this instance, banking fees and costs are distributed among the individual wards.
  - 4. If the court allows the use of combined accounts, they should be permitted only where the guardian or conservator has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges, attributable to each individual ward based on the asset level of the ward.
- B. The guardian may not sell, encumber, convey, or otherwise transfer the ward's real or personal property or any interest in that property to himself, a spouse or other family members, 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 ward property from any of the parties noted above.
- D. The guardian may not loan or give money or objects of worth from the ward's estate unless specific prior court approval is obtained.
- E. The guardian may not use the ward'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 not detrimental to the best interests of the ward.
- F. The guardian may not borrow funds from the ward. The guardian should not lend funds to the ward except in emergencies when there are no other resources available.
- G. The guardian may not profit from any transactions made on behalf of the ward's estate at the expense of the estate, nor may the guardian compete with the estate, unless authorized to do so by the court.

NDG Standard 21

### **Termination and Limitation of the Guardianship or Conservatorship**

- I. Limited guardianship of the person and estate is preferred over a full guardianship.
- II. The guardian shall seek termination or limitation of the guardianship in the following circumstances:
  - A. When the ward has developed or regained capacity in areas in which he or she was found incapacitated by the court.
  - B. When less restrictive alternatives exist.

- C. When the ward expresses the desire to challenge the necessity of all or part of the guardianship. The guardian will provide the ward with the address and phone number of the court as well as the name, address and phone number of attorneys who may be available to assist the ward in this action.
- D. When the ward has died.
- E. When the guardianship no longer benefits the ward.

NDG Standard 22

**Guardianship or Conservatorship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the ward's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved annually by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. Factors to be considered in determining reasonableness of the guardian's fees include:
  - A. Powers and responsibilities under the court appointment;
  - B. Necessity of the services;
  - C. Time required;
  - D. Degree of difficulty;
  - E. Skill and experience required to carry out the duty;
  - F. Needs of the ward; and
  - G. Costs of alternatives.
- V. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:
  - A. Date and time spent on a task;
  - B. Duty performed;
  - C. Expenses incurred;
  - D. Collateral contacts involved; and
  - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).

NDG Standard 23

**Management of Multiple Guardianship Cases – this standard does not apply to family guardians.**

- I. The guardian must institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.
- II. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian must use the evaluation as a guide for determining how many cases the individual guardian may manage.

- III. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.
- IV. 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.

NDG Standard 24

**Quality Assurance – this standard does not apply to family guardians.**

- I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.
- II. The independent review shall occur periodically, but no less often than every two years, and must include a review of a representative sample of cases.
- III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the ward and with the individual providing direct service to the ward.
- IV. An independent review may be obtained from:
  - A. Contracting Agency;
  - B. A court monitoring system;
  - C. An independent peer; or
  - D. An NGA Master Guardian.
- V. The quality assurance review does not replace other monitoring requirements established by the court.

NDG 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 a private, professional guardianships service provided to two or more individuals found by the court to be incapacitated and in need of a guardian.
- III. A professional guardian may choose to sell part or all of a guardianship practice, including good will, subject to the following guidelines:
  - A. A professional guardian considering the sale of a guardianship practice shall ensure that the wards are considered in the sale process and that guardianship responsibilities continue to be met during the transition.
  - B. Sale of the guardianship practice to a buyer engaged in serving or representing any interest adverse to the interests of the wards is prohibited.
  - C. The sale price for the guardianship practice must not be the sole consideration in selecting the buyer.
  - D. The professional guardian and the buyer will be responsible for taking each ward's case back to court. The process for the appointment of a successor guardianship must be followed as outlined in N.D.C.C. Section 30.1-28-15.

- E. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the wards during the period of the sale and transfer of ownership.
  - F. The professional guardian shall not disclose confidential information regarding a ward for the purpose of inducing a sale of a guardianship practice.
  - G. The buyer of a guardianship practice for the purpose of financing the purchase shall not increase the fees charged to the existing wards.
- IV. Admission to, employment by, or retirement from a guardianship practice, participation in retirement plans or similar arrangement, or sale of tangible assets of a guardianship practice shall not be considered a sale or purchase under this standard.

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

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

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

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

**CAPACITY** – Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one's acts. (Black's Law Dictionary, 6<sup>th</sup> Edition)

**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 Law Dictionary, 6<sup>th</sup> Edition)

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

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

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

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

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

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

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

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

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

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

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

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

**Guardian ad litem, visitor, and physician or psychologist:** The guardian ad litem is an attorney appointed by the court to represent the best interests of the proposed ward. The visitor can be a licensed social worker or other human service professional who is appointed by the court to make an impartial inquiry into a situation regarding the need of an appointment of a guardian. A physician or psychologist is a licensed person who is appointed by the court to examine the proposed ward. Each of these appointed persons must make a report to the court regarding the proposed ward.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WARD** – A person for whom a guardian has been appointed. Synonyms include *Conservatee*, *Disabled Person*, *Protected Person*, and *Incapacitated Person*.