

Standards of Practice for Florida Guardianship

Preamble

This document is based on the Standards of Practice published by the National Guardianship Association (NGA) (Fourth Edition - 2013). The Florida State Guardianship Association (FSGA) is grateful to the NGA for their comprehensive work. The FSGA has modified the NGA Standards of Practice for use in Florida.

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 professional guardian shall be guided by the NGA Model Code of Ethics and these 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 shall 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.

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.
- 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.
- 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 a restriction or expansion of the guardian's authority.

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. Current issues affecting guardians or other areas as dictated by statute.

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 make reasonable efforts to 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.

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 personal care to the person except in an emergency until other appropriate services become available. 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 when reasonably necessary employ persons including attorneys, auditors, investment advisors, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties subject to Florida Statute 744.444(13) 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.

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. 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.
- II. Informed Consent is an individual's agreement to a particular course of action based on a full disclosure of facts, capacity to make the decision intelligently, and a lack of coercion or undue influence during the decision making process.
- III. 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. Maximize the participation of the person in understanding the facts and directing a decision, to the extent possible,
 - e. Determine whether the person has previously stated preferences in regard to a decision of this nature,
 - f. Determine why this decision needs to be made now rather than later,
 - g. Determine what will happen if a decision is made to take no action,
 - h. Determine what the least restrictive alternative is for the situation,
 - i. Obtain a second medical or professional opinion, if necessary,
 - j. Obtain information or input from family and from other professionals, and

- k. Obtain written documentation of all reports relevant to each decision.

Standard 7 –Substituted Judgement

- I. Substituted Judgment is the principle of decision-making that utilizes the decision the person would have made when the person had capacity. Substituted Judgment promotes the underlying values of self-determination and well-being of the person.
- II. The guardian shall strive to determine the preferences, goals and past practices of the person and shall consider them when making decisions for the person. The guardian should gather information from the person's past medical history, advance directives, and information from reliable sources.
- III. Substituted Judgment is not used when following the person's wishes would cause substantial harm to the person and/or property, or when the guardian cannot establish the person's current or previous goals and preferences.

Standard 8—Best Interest

- I. Best Interest is the principle of decision-making that is utilized when the guardian must make a decision for a person who never had capacity, when the person's goals and preferences cannot be ascertained even with assistance, or when following the person's wishes would cause harm to the person or his or her property. It is based on what most reasonable persons would choose for themselves in similar circumstances and may be determined by independent evaluation of the facts.
- II. The guardian shall consider the potential benefit versus the potential harm, the impact the decision will have on the person, and reliable information.
- III. The guardian shall consider a decision that is the least intrusive, least restrictive, most appropriate course of action given the needs of the person.
- IV. If there is controversy over what is in the best interest of the person, the guardian shall seek recommendations from the court, an ethics committee, or other qualified professionals.

Standard 9 – Least Restrictive Alternative

- I. The guardian shall make individualized decisions based on least restrictive alternatives.

- II. The guardian shall carefully evaluate the alternatives that are available choosing the one that best meets the needs, preferences and the personal and financial goals of the person. The guardian shall choose the option that places the least restrictions on the person's freedom, rights, and ability to control his or her environment.
- III. The guardian shall weigh the risks and benefits in developing a balance between maximizing the independence and self-determination of the person while maintaining the person's dignity, protection and safety.
- 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 incorporate the person's goals and preferences in the decision.
 - 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.

Standard 10 – 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, seek to ensure that the person's goals, needs and preferences guide the planning process and include the persons' participation whenever possible.

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,
 - 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.

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.

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 subject to limitations of his or her financial resources and availability of government benefits.
 - i. The guardian shall have a strong priority for home or other community-based settings, when not inconsistent with the person's goals and preferences.
 - ii. 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.
 - iii. 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.
 - iv. 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 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.

- f. 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.
- g. 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.
- h. To promptly report to the appropriate authorities' abuse, neglect and/or exploitation as defined by state statutes.

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:
 - i. Communicate to the person the role of the guardian,
 - ii. Explain the rights retained by the person,
 - iii. 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
 - iv. Attempt to gather any missing necessary information regarding the person.
 - c. 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:
 - i. 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.
 - ii. Obtain a psychological evaluation, if appropriate.
 - iii. 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.

- iv. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person.
- II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the 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, whenever possible, should be based on a Multidisciplinary Functional Assessment.
 - f. The plan must be updated no less often than annually.
- III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:
 - a. The person's name, date of birth, address, telephone number, Social Security number, 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,
 - 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.
- IV. The guardian shall endeavor to 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 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.
 - e. 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.
 - f. 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:
 - i. Evaluating the plan,
 - ii. Enforcing residents' rights, legal and civil rights, and
 - iii. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person.
- V. 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.

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 the 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 participate in the decision making process 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 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 communicate with the treating medical provider before authorizing or denying any treatment or procedure that has been previously approved.
- 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.
- XV. 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.
- XVI. The guardian shall keep individuals that are important to the person reasonably informed of important health care decisions.

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

- I. 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.
- 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.

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 averse 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.
 - i. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.
 - ii. 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.
 - iii. 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. When a guardianship program is a part of an organization or governmental entity, it shall have independent decision-making authority.
 - c. The guardian may not be in a position of representing both the person and the service provider.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. The guardian shall neither solicit nor accept incentives from service providers.
 - h. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.
 - i. 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.

- j. 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.

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.
- 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.

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.
 - i. The guardian shall ascertain the income, assets, and liabilities of the person.
 - ii. The guardian shall ascertain the goals, needs and preferences of the person.
 - iii. 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:
 - i. Communicate to the person the role of the guardian,
 - ii. Outline the rights retained by the person and the grievance procedures available,

- iii. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity, and
 - iv. 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.
 - c. The financial plan shall emphasize a “person-centered philosophy”.
- IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, when ordered by the court.
- V. The guardian shall assess the feasibility of pursuing all public and insurance benefits for which the person may be eligible.
- VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VII. 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. Values shall be determined as of the date the guardian was appointed and must be independently documented.
- 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 person's assets to qualify the person for any public benefits program.

- X. 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.
- XI. The guardian may monitor, provide oversight or manage the personal allowance of the person.
- XII. The guardian shall, when appropriate, open a burial trust account and/or make funeral arrangements for the person.

Standard 19 – Property Management

- I. The guardian of the property may not dispose of real or personal property of the person under guardianship without Court approval.
- 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,
 - 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.

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:
 - i. This standard does not prohibit the guardian from consolidating and maintaining a person's funds in joint accounts with the funds of other persons.
 - ii. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.
 - iii. 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.
 - iv. 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.
- 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.
- h. The guardian shall not give nor receive anything of value associated with a guardianship referral.
- i. The guardian shall not accept payment for guardianship services from any service provider to the person under guardianship.

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.

Standard 22 – Guardianship Service Fees

- I. Guardians are entitled to reasonable compensation for his or her 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. A guardian may not abandon the person when estate funds are exhausted.
- V. 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 unless there is a pooled or other trust.
- VI. The guardian shall consider the factors provided in the Florida Statutes in determining the reasonableness of his or her fees.
- VII. 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).

- VIII. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

Standard 23 – Management of Multiple Guardianship Cases

- I. The guardian shall limit his or her caseload, to allow the guardian to properly carry out his or her duties for each person within statutory guidelines.
- II. The caseload must be based on an 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.
- III. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage. The guardian shall not accept new cases unless he or she has sufficient time and resources available to effectively manage the caseload and provide appropriate services

Standard 24 – Quality Assurance

- I. Guardians shall actively pursue and facilitate periodic review of his or her provision of guardianship services.
- II. The review shall occur periodically, but no less often than every three years or as otherwise necessary, and must include a review of a representative sample of cases.
- III. The review must include, but is not limited to, a review of the guardian's or agency's 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,
 - c. A CGC national master guardian, or
 - d. The Florida State Guardianship Association (FSGA) tool for self-evaluation.
- V. The quality assurance review does not replace other monitoring requirements established by the court.
- VI. The guardian shall retain the results of any review or evaluation for a period of not less than 3 years.

- VII. Upon request the guardian shall make the results of any review or evaluation available to any entity overseeing the guardian's practice.

Standard 25 – Sale or Purchase of a Guardianship Practice

- I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.
- II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.
- III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:
- a. A professional guardian considering the sale of a guardianship practice shall ensure that the 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. 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 transition and transfer of ownership.
 - f. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.