

# STANDARDS OF PRACTICE FOR GUARDIANS AND CONSERVATORS OF ADULTS

## STANDARD NO. 1 Applicable Law

The guardian and conservator shall perform duties and discharge obligations in accordance with the current state laws governing guardianship and conservatorship. In all guardianships and conservatorships, the guardian and conservator shall comply with the requirements of the court that made the appointment.

## STANDARD NO. 2 Relationship to the Court

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

## STANDARD NO. 3 Self-Determination of Ward

- A. The guardian should provide the ward with every opportunity to exercise those individual rights which the ward might be capable of exercising as they relate to the care of the ward's person.
- B. The guardian should attempt to maximize the self-reliance and independence of the ward.

- C. The guardian shall have the affirmative duty to understand and to advocate for the ward using the least restrictive alternatives on behalf of the ward.
- D. The guardian should encourage the ward to participate to the maximum extent of his/her abilities in all decisions which affect the ward; to act on his/her own behalf in all matters in which he/she is able to-do. so; and to develop or regain capacity to the maximum extent possible.

#### **STANDARD NO. 4 The Process of Decision Making**

- A. As the first priority, the guardian should ascertain whether the ward has previously expressed preferences and whether the ward has expressed any current wishes.
- B. This process represents Substituted Judgment.
- C. Substituted Judgment promotes the underlying values of self-determination and well- being of the ward.
- D. Substituted Judgment entails making the decision the guardian believes the ward would make based on the ward's previously expressed and/or current values
- E. The principle of Substituted: Judgment is not used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.
- F. The guardian would then employ the principle of Best Interest, which means based upon what the guardian believes is in the ward's best interest and respectively the least restrictive alternative..

#### **STANDARD NO. 5 Informed Decisions**

- A. Any decision made by the guardian shall be based on the Informed Consent Standard which includes:
  - 1. Full disclosure of facts needed to make the decision intelligently.
  - 2. Adequate information on the issue.
  - 3. Lack of coercion.
- B. The guardian stands in the place of the ward and must be given the same information and freedom of choice as the ward would have received if he/she were not under a guardianship.

#### Guidelines:

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

- 1. What exactly is the request and what does it mean in lay language?

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

## **STANDARD NO. 6**

### **Decision-making Regarding Medical Services and Medical Treatment**

- A. The guardian has a duty to promote and monitor the ward's health and well-being.
- B. The guardian shall ensure that all necessary medical care needed for the ward is appropriately provided.
- C. The guardian shall make reasonable efforts to determine whether the ward, prior to the appointment of a guardian, executed any advance directives. If a Medical Durable-Power of Attorney exists, the health care decisions of the agent take precedence. Under Colorado law, a guardian may not override the decisions of an agent without court authorization.(CRS 15-14-316(3))
- D. In the case of emergency medical treatment, a guardian having proper authority shall grant or deny authorization of medical treatment based on a reasonable assessment of the factors required by Standard 5 within the time frame allotted by the emergency.
- E. Under extraordinary medical circumstances, in addition to all other factors and resources outlined in Standard 5, the guardian shall utilize ethical, legal, and medical advice with particular attention to ethics committees in hospitals and elsewhere.
- F. The Guardian must consider whether a second opinion is necessary when any medical intervention poses a significant risk to the ward. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so. A second opinion shall be obtained from an independent physician.
- G. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.

- H. In all instances where a court order provides for the performance of additional steps prior to granting or denying authorization for medical intervention or treatment, the guardian shall undertake such additional steps.

**STANDARD NO. 7**  
**Decision-making With Regard to Withholding**  
**or Withdrawing Medical Care and Treatment**

- A. There are circumstances in which it is legally and ethically justifiable to consent to the withholding or withdrawing of medical care, including artificially provided nutrition and hydration, on behalf of the ward.
- B. In making this determination absent specific instructions to the contrary, there will, in all cases, be a presumption in favor of the continued treatment of the ward.
- C. For any cases in which the ward has expressed or currently expresses a preference to continue treatment, the guardian shall not consent to withholding or withdrawing or discontinuing treatment.
- D. When making this decision on behalf of the ward, the guardian shall gather and document information as outlined in Standard 5.

**STANDARD NO. 8**  
**Confidentiality**

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

**STANDARD NO. 9 Least**  
**Restrictive Alternatives**

- A. The guardian shall carefully evaluate alternative services that are available and choose the ones that best meet the individual needs of the ward while placing the

least restrictions on his/her freedom, rights, and ability to control his/her environment.

- B. The guardian shall weigh the advantages and disadvantages, the risks versus the benefits, and develop a balance between maximizing the growth potential of the ward and maintaining his/her safety and security.

Guidelines:

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

1. Become as familiar as possible with the available options in the community; such as placement options, medical services, vocational and educational services. The guardian shall respect the ward's wishes unless doing so would place him/her at risk.
2. When considering a choice among options available, also consider the needs of the ward as determined by professionals. This may include consideration of the ward's functional ability and the ward's health status.

**STANDARD NO. 10 Guardian's Ongoing  
Responsibility**

- A. Guardians have the responsibility to be informed about changes in statutes, services and care options.
- B. The guardian should involve the ward, to the extent of the ward's ability, in making decisions about the ward's housing, which shall be the least restrictive environment consistent with the ward's well-being.
  1. The guardian shall authorize movement of a ward to a more restrictive environment only after evaluation of other medical and health care options, making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the ward and serves the overall best interest of the ward and complies with any applicable court orders.
  2. When the guardian considers involuntary or long-term placement of the ward, the basis of the decision shall be to minimize the risk of substantial harm to the ward, to obtain the most appropriate possible placement and to secure the best treatment for the ward.
- C. The guardian shall ensure that the health care and daily maintenance needs of the ward are provided from every available resource.
- D. Services necessary for the benefit of the ward should be obtained by the guardian when appropriate and available.
- E. Services should be paid for through private funds, insurance or governmental benefits or services to which the ward is entitled. Such services may include medical care, social services, housing, case management, medical and

Psychological treatment, education, rehabilitation or vocational training, home care or transportation.

### **Potential Conflict of Interest in a Guardianship**

- A. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal interest which might be perceived as self-serving or adverse to the position or the best interest of the ward.
- B. In order to ensure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian shall be independent from all service providers.
- C. A professional guardian shall not directly provide fee-based housing, medical or other direct services to a ward. An exception may be made when a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, provided that such exception be in the best interest of the ward and approved by the court. Reasons for the exceptions should be documented.
- D. If a guardian utilizes his/her friends or family to provide services for a profit or fee this arrangement should be disclosed to the court.
- E. The guardian shall not solicit or accept payments from service providers.

### **STANDARD NO. 12 Management of Professional Guardianship**

- A. Professional guardians should participate in continuing education on an annual basis, which enhances their knowledge and skills. Ongoing education may include: Medicaid/Medicare training, guardian training classes, elder law classes and other training appropriate to the duties and responsibilities of a guardian.
- B. Professional guardians shall limit the size of their caseload to the size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward and allows regular contact with all service providers.
- C. The size of any caseload must be based on objective evaluation of the activities expected, the time that may be involved in the case, other demands upon the guardian and ancillary support to the guardian.

**STANDARD NO. 13**  
**Guardianship Service Fees**

- A. The guardian shall bear in mind at all times the responsibility to conserve the estate of the ward when making decisions regarding the provision of guardianship services and fees for such services.
- B. Guardians are entitled to reasonable compensation for their services.
- C. Factors to be considered in determining reasonableness of the guardian's compensation include the following:
  - 1. Powers and responsibilities under the court appointment.
  - 2. Necessity of the service.
  - 3. Time and labor required.
  - 4. Degree of difficulty.
  - 5. Skill and experience required to carry out the duty.
  - 6. Needs of the ward.
  - 7. Fees customarily charged in the locality for similar services.
- D. Fees or expenses charged by the guardian shall be documented through records maintained by the guardian. If time records are maintained then they shall clearly and accurately state:
  - 1. Time spent on task.
  - 2. Duty performed.
  - 3. Expense incurred.
  - 4. Collateral contracts involved.
  - 5. Identification of individual who performed the duty (i.e.: guardian, staff, volunteer).
- E. The guardian should only charge for the work directly related to the management of a specific ward.
- F. It is best practice of the conservator, if one is appointed, to present estimated guardianship fees in the financial plan and account for such fees in the annual accounting. These fee estimates should include conservator oversight, bookkeeping, accounting, court documents, as well as estimated fees from attorneys, CPAs, guardian and caregivers.
- G. Guardians shall report their fees as stated in Standard 2G.

**STANDARD NO. 14**  
**The Guardian's and Conservator's Relationship with Family Members  
and Friends of the Ward**

- A. The guardian and conservator will recognize the value of family and friends to the quality of life of a ward. The guardian will encourage and support the ward in maintaining contact with family members and friends, when doing so benefits the ward and is consistent with the desires of the ward.

- B. The guardian should assist the ward in maintaining or re-establishing relationships with family and friends, except when this would not benefit the ward.
- C. The guardian/conservator shall avoid personal relationships with the ward, the ward's family or the ward's friends that may impair judgment or lead to exploitation.
- D. The conservator uses best judgment when determining disposition of assets of the protected person, The determining factors are: Current and future needs of the protected person, size of the estate, and will and estate planning.

## **STANDARD NO. 15**

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

- A. The guardian and conservator shall treat all professionals with courtesy and respect and strive to enhance cooperation on behalf of the ward.
- B. It is essential that the guardian and conservator develop and maintain a working knowledge of the services, providers, and facilities available in the community.
- C. The guardian and conservator will use best judgment in determining the cost effectiveness of, providing services directly and out-sourcing services. In all cases the relationships will be disclosed in the financial plan for court approval.
- D. The guardian and conservator will engage the services of professionals (attorney, accountant, stockbroker, realtor, doctors, and the like) as necessary to appropriately meet the needs to the ward.
- E. Guardians and conservators serving the same, ward/protected person, must maintain ongoing open communication and cooperation. A conservator must consult with and adhere to reasonable requests for purchases and money to enable the ward/protected person to live a comfortable life in accordance with his/her accustomed standard of living.

## **STANDARD NO. 16.**

### **Duty to Exercise Reasonable Care and Skill in Managing the Estate**

- A. When a conservator has not been appointed; and the ward has limited funds and does not own real estate property, a guardian may manage the ward's money.
- B. The guardian and conservator shall provide competent management of the protected person's/ward's property and shall supervise all income and disbursements of the estate in compliance with all statutorily prescribed procedures and court orders.
- C. The guardian and conservator have the duty to keep the assets of the estate safe by keeping accurate records of all transactions and shall fully account for all of the assets in the estate, at least annually or as ordered by the court.



- D. The guardian and conservator shall keep the protected person's/ward's monies separate from the guardian's and conservator's personal monies; the conservator shall keep individual estate monies separate from each other unless accurate separate accounting exists within the combined accounts.
- E. The guardian and conservator shall, when appropriate, make pre-need funeral, burial, or other final arrangements consistent with the ward/protected person's wishes, if known.

Guidelines:

- 1. The guardian and conservator will act in a manner above reproach and will be open to scrutiny at all times.
- 2. The guardian and conservator shall determine if there is an established estate plan of the ward/protected person and obtain the original documents, if available.
- 3. The conservator is held to the Prudent Person Rule, which is an investment standard that considers the reasonableness of an investment based on whether a prudent person of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would make that investment.
- 4. With regard to actual investment of assets, a conservator follows the Prudent Investor Rule which states that:
  - i. All investments must be considered as part of an overall portfolio rather than individually.
  - ii. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and conservators who do not use risk-reducing strategies may be penalized.
  - iii. Under most circumstances, the ward's assets must be diversified. Conservators are obliged to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk.
  - iv. Conservators have a duty to either demonstrate investment skill in managing assets or to delegate investment management to another qualified party.

STANDARD NO. 17 Property Management by a  
Conservator

- A. The conservator should not dispose of real property without a prior Order of the Court. The disposal of personal property is not restricted. The conservator shall use his/her best judgment and disclose all dispositions in required reports to the court.
- B. In the absence of reliable evidence of the protected person's views prior to the appointment of a conservator, the conservator, having the appropriate authority, shall not sell, encumber, convey or transfer property of the protected person, or an interest therein, unless it is in the best interest of the protected person.

## Guidelines:

In considering whether it is in the best interest of the protected person to dispose of property, the conservator shall consider the following factors:

1. The benefit of the disposition of the property to improve the life of the protected person.
  2. The likelihood that the protected person will need or benefit from property in the future.
  3. The current desires of the protected person with respect to the property.
  4. The provisions of the protected person's estate plan as it related to the property, if any.
  5. The tax consequence of the transaction.'
  6. The impact of the transaction on the protected- person's entitlement to public benefits.
  7. The condition of the entire existing estate ..of the protected person.
  8. The ability of the protected person to maintain the property.
  9. The availability and appropriateness of alternatives to the disposition of the property.
  10. The likelihood that such property may deteriorate or be subject to waste.
  11. The benefit versus the liability and costs of maintaining the property.
- C. The conservator has the duty to obtain a professional assessment of the value of real property.

## **STANDARD NO. 18**

### **Ongoing Responsibilities of a Conservator**

- A. The conservator shall manage the estate in compliance with applicable statutes and rules.
- B. The conservator shall post and maintains bond with surety sufficient for the protection of the protected person's estate unless otherwise ordered by the court
- C. The conservator shall obtain for the protected person all public benefits for which he/she is eligible.
- D. The estate of the protected person shall be managed for the benefit of the protected person and not for the benefit of the conservator or anyone else personally or professionally related to the conservator or protected person.
- E. The conservator should allow the protected person the opportunity to manage funds to his or her ability.
- F. The conservator shall file with the court all reports as required by law or as ordered by the court. The conservator shall thoroughly document management of the protected person's estate, carrying out any and all duties required by statute or rule.

- G. The conservator shall prepare an inventory of all property for which he/she is responsible and follow state statute as to when the inventory is due to the court. This report should list all the assets owned by the protected person with their values, as far as information permits, on the date the conservator was appointed.
- H. All accountings shall contain information to clearly define all transactions during the accounting period.
- I. All accountings prepared by the conservator shall be complete, accurate and understandable.
- J. The conservator, where appropriate, shall oversee the disposition of the protected person's assets to qualify the protected person for any public benefits program.
- K. The conservator shall have the duty to make claims against others on behalf of the estate as deemed in the best interest of the protected person and the duty to defend against actions which would result in a loss of assets to the estate.
- L. Upon the termination of the conservator or death of the protected person, the conservator shall facilitate the appropriate closing of the estate and submit a final reports to the court.
- M. The conservator may charge reasonable fees.
- N. The conservator shall monitor or manage, if necessary, the personal needs account of the protected person.

**STANDARD NO. 19**  
**Conflict of Interest: Estate, Financial and Business Services**  
**in a Conservatorship**

- A. The conservator shall avoid even the appearance of a conflict of interest or impropriety when dealing with the estate of the protected person. Impropriety or conflict of interest arises where the conservator has some personal or agency interest which might be perceived as self-serving or adverse to the position or best interest of the protected person.
- B. Specific situations that may create an impropriety or conflict of interest include, but are not limited to the following:
  - 1. The conservator shall not commingle personal or business funds with the funds of the ward. The conservator should not consolidate or maintain funds in joint accounts with the funds of other protected persons without court approval.
  - 2. The conservator shall not sell, transfer, convey or encumber real or personal property or any interest therein to himself, a spouse, a co-worker, employee, member of the board of the agency or corporate guardian, an agent or attorney or any corporation or trust in which the conservator has a beneficial interest.
  - 3. The conservator shall not borrow funds from the estate of the protected person.

4. The conservator must not profit from any transactions made on behalf of the estate at the expense of the estate; nor may the conservator compete with the estate of the protected person, unless authorized to do so by the court.
5. The conservator shall not encourage the protected person to make gifts or bequests that will benefit the conservator his/her family or any entity in which the conservator has an interest.
6. The conservator shall not sell or profit from the sale of any conservatorship to a successor conservator.

### **STANDARD NO. 20 Termination and Limitation of the Guardianship/conservatorship**

- A. When appropriate and authorized by the court, limited guardianship/conservatorship is preferred, over unlimited guardianship/conservatorship.
- B. The guardian/conservator has an affirmative obligation to seek termination or limitation of the guardianship/conservator wherever indicated.

#### Guidelines:

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

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