

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 16-9103

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## ADOPTION OF CODE OF ETHICS AND MINIMUM STANDARDS FOR GUARDIANSHIP SERVICES

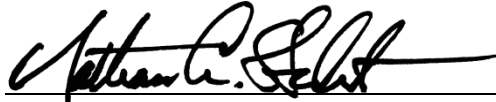
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**ORDERED** that:

Under Sections 152.101, 155.101, and 152.205 of the Government Code, the Supreme Court of Texas approves the attached Code of Ethics and Minimum Standards for Guardianship Services. The Code and Standards are effective immediately.

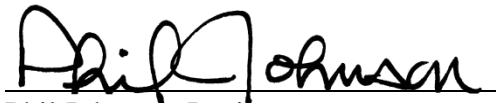
Dated: June 24, 2016



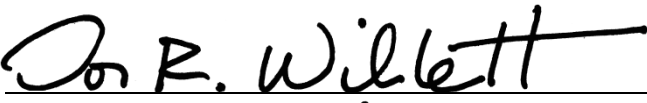
Nathan L. Hecht, Chief Justice



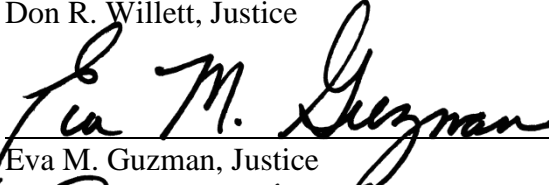
Paul W. Green, Justice



Phil Johnson, Justice



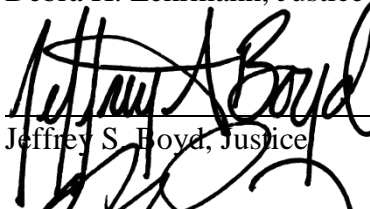
Don R. Willett, Justice



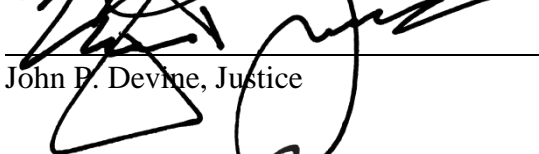
Eva M. Guzman, Justice




Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

## Certified Guardians

### Code of Ethics and Minimum Standards for Guardianship Services

#### Code of Ethics

*Preamble.* The purpose of this Code of Ethics and Minimum Standards for Guardianship Services (Minimum Standards) is to protect the interests of incapacitated persons in Texas by ensuring that certified guardians and guardianship programs provide guardianship services in a professional and competent manner. These standards are promulgated by the Texas Supreme Court pursuant to Section 155.101 of the Texas Government Code.

1. *Ward's Independence and Self-Reliance Promoted.* Guardianships in Texas are designed to grant authority over an incapacitated person only to the extent necessary to promote and protect the incapacitated person's well-being. To that end, the guardian must seek to encourage the development or maintenance of maximum independence and self-reliance to the extent consistent with the ward's health and safety and financial circumstances, with the eventual goal, if possible, of self-sufficiency.
2. *Fiduciary Relationship.* A guardian is a fiduciary of a ward under the guardian's care and must exhibit the highest degree of loyalty and fidelity in the guardian's relations with the ward.
3. *Confidentiality.* A guardian must treat information relating to a ward under the guardian's care as confidential and may disclose such information only with the consent of the ward or, if the ward cannot give consent, only as necessary to promote and protect the ward's well-being. To the extent not inconsistent with the ward's direction and best interests, or to the extent necessary to respond to a complaint or investigation, a guardian may disclose information about the ward's condition to family and friends of the ward or to an appropriate government entity. A guardian must disclose information about those matters specified in Section 1151.056, Texas Estates Code, to a ward's spouse, parents, siblings and children, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056, Texas Estates Code.
4. *Ward's Preferences Generally Respected.* When making decisions on behalf of a ward, a guardian must strive to act in accordance with the known or ascertainable preferences of the ward, including preferences expressed in valid estate planning documents, unless to do so would cause substantial harm to the ward's person or property, in which case the guardian should make decisions that are in the best interest of the ward. A guardian must regularly visit and, to the extent feasible, confer with the ward regarding decisions to be made in and on the ward's behalf. To the extent not inconsistent with the ward's direction and best interests, a guardian may confer with family and friends of the ward concerning the ward's preferences.
5. *Duty of Competence.* A guardian of the person must make reasonable and informed decisions about the ward's residence, care, treatment, and services. A guardian of the estate must take

care of and manage the estate as a prudent person would manage the person's own property unless relevant law imposes a higher standard of care. In either case, a guardian must exercise reasonable diligence to remain informed about options available to the ward to promote independence and self-reliance. A guardian must refrain from making decisions outside of the scope of authority granted to the guardian by law or court order.

6. *Less Restrictive Alternatives Preferred.* In determining the ward's residence, a guardian must strive to select a residence that represents the least restrictive environment available, both practically and financially. In making decisions relating to the ward's health, the guardian must strive to select care, treatment and service options that represent the least restrictive form of intervention available, both practically and financially. In either event, the guardian must give due consideration to the ward's preferences and well-being.
7. *Avoidance of Conflicts of Interest and Self-Dealing.* A guardian must avoid conflicts of interest and refrain from personally engaging in transactions with the ward and other forms of self-dealing, except in a manner authorized by law.
8. *Responsibility to Keep Court Apprised of Condition of Ward's Person or Property.* A guardian must keep the court monitoring the guardianship apprised of the guardian's and ward's whereabouts and the condition of the ward's person and estate, including timely filing reports and accounts as required by law or court order, and updating the court regarding significant, material changes as they occur.
9. *Responsibility to Seek Modification or Termination of Guardianship.* A guardian must seek modification of the terms of the guardianship or termination of the guardianship when appropriate to promote the independence and self-reliance of the ward. Upon termination of a guardianship, the guardian must settle and close the guardianship competently and without unnecessary delay.
10. *Responsibility to Manage Caseload.* A guardian must not accept a new appointment if doing so would substantially and adversely affect the guardian's ability to fulfill duties to any ward already under the guardian's care. When a guardian can no longer effectively perform the duties of the guardian to a ward under the guardian's care, the guardian must take necessary steps to alert the court of the need for the appointment of a successor guardian.

### **Minimum Standards for Guardianship Services**

1. *Applicability.* These Minimum Standards apply to the provision of guardianship services by certified guardians, guardianship programs, and the Texas Department of Aging and Disability Services.
2. *Relationship with the Court.*
  - (a) Guardianships are established through a legal process and are subject to the supervision of the court.
  - (b) The guardianship court order determines the authority and the limitations of the guardian.

- (c) The guardian must know the extent of the powers granted by the court and must not act beyond those powers.
- (d) The guardian must 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.
- (e) The guardian must obtain court authorization for actions that are subject to court approval.
- (f) The guardian must submit reports regarding the status of the guardianship to the court as ordered by the court or required by the Texas Estates Code, but not less often than annually.
- (g) All payments to the guardian from the assets of the ward must follow applicable federal or Texas statutes, rules, and requirements and are subject to review by the court.

3. *Relationship with the Ward.*

- (a) The guardian must maintain a professional relationship with the ward. The guardian must treat the ward with respect, consideration, and recognition of the ward's dignity and individuality.
- (b) The guardian must not engage in sexual relations with a ward.
- (c) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must keep the ward informed about the terms and limitations of the guardianship.
- (d) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must provide the ward contact information for the court, the Judicial Branch Certification Commission, the Department of Family and Protective Services, Disability Rights Texas, and other state and local agencies and organizations which provide resources on aging, disability, mental health, and intellectual and developmental disabilities.

4. *Relationship with Family Members and Friends of the Ward.*

- (a) The guardian must maintain a professional relationship with the ward's family and the ward's friends.
- (b) The guardian must recognize the value of family and friends to the quality of life of the ward. The guardian must encourage and support the ward in maintaining contact with family members and friends when doing so benefits the ward.
- (c) 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.
- (d) When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval and in compliance with the Texas Estates Code, to obtain assets (particularly those with sentimental value).
- (e) The guardian must make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward. Subject to court approval,

the present needs of a ward, if not covered by other property, may have priority over preservation of designated property.

- (f) 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.
- (g) The guardian must maintain communication with the ward's spouse, parents, siblings, and children if the ward is admitted to a medical facility for acute care for three days or longer, the ward's residence has changed, or the ward is staying at a location other than the ward's residence for longer than a week, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056, Texas Estates Code.
- (h) 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.
- (i) The guardian must inform the ward's spouse, parents, siblings, and children if the ward dies and, in the event of the ward's death, of any funeral arrangements and the ward's final resting place, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056 Texas Estates Code.

5. *Relationship with Other Professionals and Providers of Service to the Ward.*

- (a) The guardian must treat all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the ward.
- (b) The guardian must develop and stay current with the services, providers, facilities, and community resources to ensure that the ward receives high-quality services from the most appropriate provider.
- (c) The guardian must coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. A guardian must not provide direct services to the ward for compensation unless a written contract approved by the court authorizes the provision of such services.
- (d) The guardian must engage the services of professionals (such as attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward and in compliance with the Texas Estates Code.
- (e) The guardian must 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. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c). Governmental entities and guardianship programs providing multiple services must maintain an arm's-length relationship between those services.

6. *Informed Consent.*

- (a) The guardian must enable the ward to exercise the ward's right to make informed consent decisions to the greatest extent of the ward's capacity and ability. Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must annually explain the rights of the ward listed in §1151.351, Texas Estates Code, in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.
- (b) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must provide the ward a copy of the guardianship order, letters of guardianship, contact information for the court that issued the letters, contact information for the Judicial Branch Certification Commission, and other entities required by §1151.351, Texas Estates Code.
- (c) The guardian, standing in the place of the ward who lacks capacity, must access the same information that would have been given to the ward if the ward had capacity in order to make informed substituted judgments on behalf of the ward.
- (d) The guardian must make a good faith effort to determine whether the ward has previously stated any preferences before making any decisions on the ward's behalf and then follow these preferences unless doing so would adversely affect the ward or the ward's estate.
- (e) The guardian may make decisions that are contrary to the known preferences of the ward when following the wishes of the ward would adversely affect the ward.

7. *Standards for Decision-Making.*

- (a) Each decision made by the guardian must be an informed decision based on the principle of Informed Consent.
- (b) Substituted Judgment.
  - (1) 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.
  - (2) Substituted Judgment promotes the underlying values of self-determination and well-being of the ward.
  - (3) 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.
- (c) Best Interest of the Ward.
  - (1) 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.
  - (2) 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.

- (3) 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.
- (4) Best Interest decisions include consideration of the ward's current and previously expressed wishes.

8. *Least Restrictive Alternative.*

- (a) The guardian must 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.
- (b) The guardian must 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.
- (c) The following guidelines apply in the determination of the least restrictive alternative:
  - (1) The guardian must become familiar with the available options for residence, care, medical treatment, vocational training, and education.
  - (2) The guardian must make a good faith effort to know the ward's preferences.
  - (3) The guardian must 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.

9. *Self-Determination of the Ward.*

- (a) The guardian must provide the ward with every opportunity to exercise those rights that the ward might be capable of exercising as they relate to the care of the ward's person.
- (b) The guardian must encourage the development or maintenance of maximum self-reliance and independence of the ward.
- (c) The guardian must advocate for individualized planning and the least restrictive alternative on behalf of the ward.

10. *Duties Regarding Diversity and Personal Preference of the Ward.* The guardian must make a good faith effort to determine the extent to which the ward identifies with particular ethnic, religious, gender, cultural, and personal values and to make decisions consistent with these values, unless doing so would result in substantial harm to the ward's person or property.

11. *Confidentiality.*

- (a) Subject to state and federal law, the guardian must keep the affairs of the ward confidential.
- (b) The guardian must respect the ward's privacy and dignity, especially when the disclosure of information is necessary.



- (c) Disclosure of information must be limited to what is necessary and relevant to the issue being addressed in the best interest of the ward.

12. *Duties of the Guardian of the Person.* The guardian of the person has the following duties and obligations to the ward unless the order of appointment provides otherwise:

- (a) To see that the ward is living in the most appropriate environment that addresses the ward's wishes and needs.
  - (1) The guardian must 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 the ward in an institutional setting, the bases of the decision must be to minimize the risk of substantial harm to the ward, to obtain the most appropriate placement possible, and to secure the best treatment for 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.
- (d) To seek specific judicial authority when the dissolution of a marriage or another extraordinary circumstance is being addressed.
- (e) To file with the court, on a timely basis but not less often than annually, all reports required by the Texas Estates Code or as ordered by the court.
- (f) To petition the court for modification or termination of the guardianship when the ward's capacity is partially or completely restored.

13. *Guardian of the Person: Initial and Ongoing Responsibilities.*

- (a) After appointment, the guardian must:
  - (1) Address all issues of the ward that require immediate action.
  - (2) Meet with the ward as soon after the appointment as is feasible. At the first meeting, to the extent possible given the ward's capacity to comprehend and communicate, the guardian must:
    - (A) Communicate to the ward the role of the guardian;
    - (B) Explain the rights retained by the ward;
    - (C) Unless this right of the ward is limited by a court or otherwise restricted by law, deliver a copy of the guardianship order, letters of guardianship, a copy of the Bill of Rights for Wards, Subchapter H, Chapter 1151, Texas Estates Code, and contact information for the court that issued the order and letters.

- (D) Unless this right of the ward is limited by a court or otherwise restricted by law, provide the ward contact information for regulatory agencies and resource organizations as required by §1151.351, Texas Estates Code.
  - (E) Assess 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
  - (F) Attempt to gather any missing necessary information regarding the ward.
- (3) Notify relevant agencies and individuals of the appointment of a guardian and complete the intake process by documenting:
- (A) Physician's evaluation.
  - (B) Psychological or neuropsychological evaluation, if appropriate.
  - (C) An inventory of advance directives: Such statements of intent would include, but are not limited to, powers of attorney, living wills, and organ donation statements.
- (b) The guardian must obtain all public benefits for which the ward is eligible and are appropriate to the ward's best interest.
- (c) The guardian must establish and maintain contact with the guardian of the estate or other fiduciary of the ward, where appropriate.
- (d) The guardian must 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.
- (1) The plan must use a multidisciplinary approach to address medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward as applicable and appropriate.
  - (2) 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.
  - (3) Short-term goals are issues that need to be addressed immediately or as soon as possible and long-term goals are issues that require on-going attention.
  - (4) The plan must be updated no less often than annually.
- (e) The guardian must maintain a separate file for each ward. The file must include, at a minimum, the following information and documents:
- (1) The ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
  - (2) All legal documents involving the ward;
  - (3) Advance directives;
  - (4) A list of key contacts;

- (5) A list of service providers, contact information, a description of services provided to the ward, and progress/status reports;
  - (6) A list of all known 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 applicable. The guardian must update the list after each of the guardian's visits or as the guardian receives information;
  - (7) Documentation of all ward and collateral contacts, including the date, time, and activity;
  - (8) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward;
  - (9) The guardianship plan;
  - (10) An inventory, if required;
  - (11) Assessments regarding the ward's past and present medical, psychological, and social functioning;
  - (12) Documentation of the ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
  - (13) A photograph of the ward.
- (f) The guardian must visit the ward not less often than monthly consistent with the requirements below unless otherwise ordered by the court.
- (1) The guardian must 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.
  - (2) The guardian must maintain substantive communication with service providers, caregivers, court visitors, and others attending to the ward.
  - (3) The guardian must make a good faith effort to participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the ward.
  - (4) The guardian must make a good faith effort to obtain an appropriate service plan for the ward from each service provider and must take appropriate action to ensure that service plans are being implemented.
  - (5) The guardian must regularly examine all services and all 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.
  - (6) The guardian must advocate on behalf of the ward with staff in an institutional setting and other residential placements. The guardian must 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.

- (7) The guardian must maintain a record of each in-person visit with the ward, including the date, time, and location of the visit. Upon request, the guardian must provide a copy of the record to the Judicial Branch Certification Commission and the court.

14. *Decision-Making About Medical Treatment.*

- (a) The guardian must promote, monitor, and maintain the ward's health and well-being.
- (b) The guardian must ensure that all reasonably available medical care necessary for the ward is provided.
- (c) The guardian must make a good faith effort to determine whether the ward, before becoming incapacitated, executed any advance directives, such as a living will, a durable power of attorney, or any other specific written or oral declaration of intent. On finding such documents, the guardian must consider the ward's wishes in the decision-making process.
- (d) The guardian must make decisions about withholding or withdrawing medical treatment in accordance with the above provisions unless restricted by the order appointing the guardian.
- (e) Subject to available local and financial resources, the guardian must explore treatment options in medical interventions posing a significant risk to the ward.

15. *Conflict of Interest: Ancillary and Support Services.*

- (a) The guardian must 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. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c).
- (b) If the guardian becomes aware or is made aware that a conflict of interest exists in the guardian's relationship with a ward, the guardian must immediately disclose to the court the existence and nature of the conflict of interest.
- (c) Unless authorized by court order, the guardian, other than the Department of Aging and Disability Services and guardianship programs, must not directly provide housing, medical, or other direct services to the ward. Persons who own, operate or are employed by, or associated with, an entity that provides health care, habilitation, support, vocational, residential supervision or other direct services do not qualify as a guardianship program. This includes persons who own, operate or are employed by or associated with such entities which are not licensed.
  - (1) The guardian must coordinate and assure the provision of all necessary services to the ward rather than providing those services directly.

- (2) 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 must be independent from all service providers.
- (d) 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.
- (e) The guardian must not solicit or accept incentives from service providers.
- (f) The guardian must consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.

16. *Duties of the Guardian of the Estate.*

- (a) The guardian of the estate must maintain and manage the ward's estate as a prudent person would manage the person's own property consistent with a fiduciary's duties and responsibilities set forth in the Texas Estates Code.
- (b) The guardian must supervise all income and disbursements of the estate in accordance with the Texas Estates Code.
- (c) The guardian must manage the estate only for the benefit of the ward.
- (d) The guardian must safeguard estate assets by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- (e) The guardian must keep estate money separate from the guardian's personal money.
- (f) The guardian must keep the money of individual estates separate.
- (g) The guardian must make claims against others on behalf of the estate as deemed in the best interest of the ward and must defend against actions that would result in a loss of estate assets in compliance with the Texas Estates Code.
- (h) The guardian must employ prudent accounting procedures when managing the estate.
- (i) The guardian must determine if a will exists and, for estate planning purposes only, may request that a copy be provided to the court for in camera inspection under Section 1162.005 of the Texas Estates Code.

17. *Guardian of the Estate: Initial and Ongoing Responsibilities.*

- (a) With the proper authority, the initial steps after appointment as guardian are as follows:
  - (1) The guardian must 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.
  - (2) The guardian must meet with the ward as soon after the appointment as feasible. At the first meeting the guardian must:
    - (A) Communicate to the ward the role of the guardian;

- (B) Outline the rights retained by the ward and the grievance procedures available;
  - (C) Assess the previously and currently expressed wishes of the ward and evaluate them based on current acuity; and
  - (D) Attempt to gather from the ward any necessary information regarding the estate.
- (b) The guardian must 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 must communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the ward.
  - (c) The guardian must post and maintain a bond with surety sufficient for the protection of the estate unless the guardian is exempt from bond by law.
  - (d) The guardian must obtain all public benefits for which the ward is eligible.
  - (e) The guardian must thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
  - (f) The guardian must prepare an inventory of the ward's property in compliance with the Texas Estates Code and as otherwise ordered by the court.
  - (g) All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period in compliance with the Texas Estates Code and as otherwise ordered by the court. All accountings must be complete, accurate, and understandable.
  - (h) The guardian must oversee the disposition of the ward's assets to qualify the ward for any public benefits program.
  - (i) On the termination of the guardianship or the death of the ward, the guardian must facilitate the appropriate closing of the estate and submit a final accounting to the court.
  - (j) The guardian must monitor the personal trust account of the institution-based ward.
  - (k) The guardian must, when appropriate, open a burial account and make funeral arrangements for the ward.

#### 18. *Property Management.*

- (a) The guardian may not sell, encumber, convey, or otherwise transfer property of the ward, or an interest in that property, without judicial authority.
- (b) The guardian must obtain an independent appraisal of real and personal property whenever ordered by the court.
- (c) The guardian must provide for insurance coverage, as appropriate, for property in the estate.

#### 19. *Conflict of Interest: Estate, Financial, and Business Services.*

- (a) The guardian must 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. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c). Governmental entities and guardianship programs providing multiple services must maintain an arm's-length relationship between those services.

- (b) If the guardian becomes aware or is made aware that a conflict of interest exists in the guardian's relationship with the ward, the guardian must immediately disclose to the court the existence and nature of the conflict of interest.
- (c) The guardian must not commingle personal or program funds with the funds of the ward.
- (d) The guardian must not sell, encumber, convey, or otherwise transfer the ward'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.
- (e) The guardian must not sell or otherwise convey to the ward property from any of the parties noted above.
- (f) The guardian must not loan, give, or use the ward's income or assets to support or benefit other individuals directly or indirectly unless specific prior court approval is obtained.
- (g) The guardian must not borrow funds from, or lend funds to, the ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court.
- (h) The guardian must not profit from any transactions made on behalf of the ward's estate at the expense of the estate, unless authorized to do so by the court. The guardian must not compete with the estate, unless authorized to do so by the court.

20. *Modification and Termination of the Guardianship.* The guardian may seek modification or termination of the guardianship in the following circumstances pursuant to the Texas Estates Code:

- (a) When it appears that 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.
- (d) When the ward has died.

21. *Management of Multiple Guardianship Cases.*

- (a) The guardian must limit the guardianship caseload to a size that allows the guardian to accurately and adequately provide care, supervise, and protect each ward; that allows a

minimum of one visit per month with each ward; that allows regular contact with all service providers; and that allows the guardian to comply fully with all requirements contained in statutes, Rules, Code of Ethics and Minimum Standards for guardians. The guardian should decline to accept additional appointments if to do so would substantially and adversely impair the guardian's ability to fulfill duties to wards already under the guardian's care. When a guardian can no longer effectively perform the duties of the guardian to a ward under the guardian's care, the guardian shall take necessary steps to alert the court of the need for the appointment of a successor guardian.

- (b) In order to develop and maintain an appropriately sized caseload, the guardian should consider:
- (1) Whether the guardian has been appointed as guardian of the person, guardian of the estate, or both for each case in the guardian's caseload.
  - (2) The complexity and overall demands of each case.
  - (3) The amount of travel time necessary to visit each ward at least once per month and to have regular contact with each ward's service providers.
  - (4) The amount of time required to:
    - (A) complete the necessary tasks, assessments, and observations during a visit with each ward;
    - (B) contact each service provider for a ward and to obtain from each of them updated information concerning the ward's condition, the services being provided, and any additional or different services needed by the ward;
    - (C) confer with or contact family and/or friends of the ward, to arrange for visits or other types of contact between the ward and the ward's family and friends;
    - (D) perform all financial functions which are part of the guardian's responsibilities regarding a ward; and
    - (E) timely complete all updates to the file of each ward and timely complete all reports required for each ward.
  - (5) Other duties of the guardian, including but not limited to administrative duties, such as documenting the ward's file, listed above.
  - (6) Whether ancillary support is available to the guardian.
- (c) An individual certified or provisionally certified guardian who at any time has 50 or more wards appointed or assigned to him or her must, within 10 days, report this situation to the Certification Division Director of the Judicial Branch Certification Commission. The report must include a list of all the guardian's cases and must provide for each case the cause number, court and county; the name and residence location of the ward; the type of guardianship (person, estate or both); and the dates the guardian was appointed, qualified and/or assigned to each case. Upon request by the Certification Division Director of the Judicial Branch Certification Commission, the guardian must provide additional information.



22. *Quality Assurance.* The guardian must make a good faith effort to provide quality in the services the guardian delivers and to develop a quality assurance program to that end.

23. *Definitions.*

- (a) Advance directive – Has the meaning assigned by Section 166.002 of the Texas Health and Safety Code.
- (b) Advocate - To assist, defend, or plead in favor of another.
- (c) Best interest - The course of action taken to maximize what is best for a ward. It includes consideration of the least intrusive, most normalizing, and least restrictive alternative possible given the needs and limitations of the ward.
- (d) Conflict of interest - Includes situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another; situations in which the guardian's responsibilities to a ward will be limited by the guardian's other responsibilities or by a personal interest of the guardian; and situations in which the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards.
- (e) Corporate fiduciary - Has the meaning assigned by Section 1002.007 of the Texas Estates Code.
- (f) Court, probate court, statutory court, statutory probate court - Has the meaning assigned by Section 1002.008 of the Texas Estates Code.
- (g) Direct services - Services on behalf of a ward, including medical and nursing care, respite and hospice care, case management, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.
- (h) Estate - Has the meaning assigned by Section 1002.010 of the Texas Estates Code.
- (i) 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.
- (j) Functional assessment - A procedure to measure and document on multiple dimensions the functional capacity, including the ability to fully understand and make decisions, to plan and undertake courses of action, and to evaluate the outcome of such courses of action, and the general well-being of an individual.
- (k) Guardian – Has the meaning assigned by Section 1002.012 of the Texas Estates Code. For the purpose of these Minimum Standards, the term also includes Certified Guardians.
  - (1) Certified Guardian – A person who is certified to provide guardianship services in this state by the Judicial Branch Certification Commission.
  - (2) Engaged in the business of providing guardianship services – To perform, offer to perform, or advertise the performance of guardianship services for compensation.

- (3) Guardian of the Estate - A person or entity appointed by the court who has the powers and duties listed in Section 1151.001 and 1151.151 of the Texas Estates Code or as ordered by the court.
- (4) Guardian of the Person - A person or entity appointed by the court who has the powers and duties listed in Section 1151.051 of the Texas Estates Code or as ordered by the court.
- (5) Guardianship Program – A local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person’s own welfare or financial affairs.
- (6) Guardianship Services -- Conducting, performing, or administering such duties or powers as prescribed by the Texas Estates Code or under a court order in a guardianship matter.
- (7) Private Professional Guardian - A person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.
- (l) Incapacitated person - Has the meaning assigned by Section 1002.017 of the Texas Estates Code.
- (m) 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.
- (n) 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.
- (o) 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.
- (p) 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.
- (q) 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.
- (r) Ward - Has the meaning assigned by Section 1002.030 of the Texas Estates Code.