Guardianship and Conservatorship Program Regulations

Regulation 400 General

Preamble: These standards of practice incorporate language from the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. References and links to statutory provisions are included in the sections. As a general matter, the authority to act as a guardian and/or conservator in every case is limited to the authority that the court has granted. These standards apply except as modified by court order. If a standard of practice and a court order appear to conflict, the guardian and conservator should bring the matter to the attention of the superior court. The superior court would be the final arbiter. The link to full text of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is below.

RCW 11.130 Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

400 General

400.1 The following standards apply to all Certified Professional Guardian and Conservators and Certified Professional Guardian and Conservator agencies. These standards apply only to the degree that the court has granted a guardian and conservator the authority contemplated in a given standard.

400.2 Whenever the term “guardian and conservator” is used in these Standards, it is meant to refer to a certified professional guardian and conservator or to a certified professional guardian and conservator agency. If the term “guardian” is used alone, it refers to a certified professional guardian and conservator when acting as a guardian, unless otherwise noted. If the term “conservator” is used alone, it refers to a certified professional guardian and conservator when acting as a conservator, unless otherwise noted.

400.3 Whenever the term “court” is used is in these Standards, it is meant to refer to the Superior Court which has authority over the guardianship and/or conservatorship in which the guardian and conservator has been appointed.

400.4 Whenever the terms “individual subject to guardianship” or “individual subject to conservatorship” are used, they are meant to refer to the individual for whom the guardian and conservator has been appointed under RCW 11.130.

400.5 Whenever the term “notice parties” is used, it is meant to refer to those people who are entitled to notice of proceedings or events under RCW 11.130.

400.6 A guardian is a fiduciary and owes the highest duty of good faith and care to the individual subject to a guardianship. RCW 11.130.325 (1) A conservator has fiduciary duties of prudence and loyalty to the individual subject to conservatorship. RCW 11.130.505 (1) A fiduciary has the duty to act primarily for another's benefit. The guardian and conservator shall carry out his or her duties carefully and honestly. The guardian and conservator shall act selflessly, prudently, and with undivided loyalty to the individual subject to guardianship and/or conservatorship.

400.7 To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, and “should” creates a duty or obligation, but is not absolute, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with “shall not:[1]

[1] The Certified Professional Guardianship and Conservatorship Board acknowledges that these Standards of Practice draw from the National Guardianship Association (NGA) Standards of Practice and that the NGA has granted the Board permission to use them.

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Regulation 400 Standards of Practice Regulation

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401 Guardian and Conservator's Duty to Court

401.1 The guardian and conservator shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.2 The guardian and conservator shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian and conservator is aware of a court order that may be in conflict with these standards, the guardian and conservator shall bring the conflict to the attention of the court and seek the court's direction.

401.3 The guardian and conservator shall at all times be thoroughly familiar with RCW 11.130, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian and conservator in the management of the affairs of an individual subject to guardianship and/or conservatorship.

401.4 The guardian and conservator shall seek legal advice as necessary to know how the law applies to specific decisions.

401.5 The guardian and conservator shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

401.6 A guardian and conservator should develop adequate contingency planning to provide coverage of services for their clients given the specific situations of the guardian and conservator. A guardian and conservator has the responsibility to plan for their fiduciary duties to be carried out to meet the needs of their clients as authorized by the court. Identification of a responsible party should be in ay periodic reports to the court.

Guardianship and Conservatorship Program Regulations

402 Guardian and Conservator's Relationship to Family and Friends of Individual Subject to Guardianship and/or Conservatorship and to Other Professionals

402.1 When the guardian and conservator has limited authority the guardian and conservator shall work cooperatively with the individual subject to guardianship and/or conservatorship and/or with others who have authority in other areas for the benefit of the individual.

402.1.1 If a power of attorney for health care or finances is in effect, unless there is a court order to the contrary, the decision of the agent takes precedence over the guardian or conservator, and a guardian or conservator shall cooperate with the agent to the extent feasible.

RCW 11.130.330 (6)

RCW 11.130.335 (1)

RCW 11.130.435 (4)

RCW 11.130.505 (11)

402.2 The guardian and conservator, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the individual subject to guardianship and/or conservatorship. In determining the best interest of the individual, the guardian and conservator shall consider information received from professionals and persons who demonstrate sufficient interest in the welfare of the individual.

RCW 11.130.325 (5) (a)

402.3 The guardian and conservator shall seek independent professional evaluations, assessments, and opinions when necessary to identify the individual's needs, functional and cognitive abilities, and best interests.

402.4 The guardian and conservator shall recognize that their decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian and conservator alone is ultimately responsible for decisions made by the guardian and conservator on behalf of the individual subject to guardianship and/or conservatorship.

402.5 A guardian and conservator shall not disclose personal or other sensitive information about the individual to third parties except: (a) when necessary and relevant to the needs of the individual or (b) as required by these standards or other applicable laws or when directed by the court or the CPGC Board.

402.6 The guardian and conservator must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the individual subject to guardianship and/or conservatorship to the extent reasonable and necessary.

402.7 The guardian and conservator shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian and conservator shall act to coordinate and monitor services needed by the individual subject to guardianship and/or conservatorship to ensure that the individual is receiving the appropriate care and treatment.

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Guardianship and Conservatorship Program Regulations

403 Self-Determination of Individual Subject to Guardianship and/or Conservatorship

403.1 The civil rights and liberties of the individual subject to guardianship and/or conservatorship shall be protected. The independence, self-reliance and self-determination of the individual shall be promoted and maximized to the greatest extent consistent with their protection and safety. The guardian and conservator shall protect the personal and economic interests of the individual subject to guardianship and/or conservatorship and foster growth, independence, self-reliance, and self-determination to the extent reasonably feasible.

403.2 To the extent reasonably feasible, the guardian and conservator shall encourage the individual to participate in decisions, act on their own behalf, and develop or regain the capacity to manage their own personal affairs.

RCW 11.130.325 (2)

RCW 11.130.505 (2)

403.3 Whenever appropriate a guardian and conservator shall consult with the individual subject to guardianship and/or conservatorship, and shall treat with respect, the feelings, values, and opinions of the individual. The guardian shall, to the extent reasonably feasible, involve the individual in decisions affecting the individual, including, but not limited to, decisions about the individual's care, dwelling, activities, or social interactions.

RCW 11.130.325 (2) (b)

403.4 When making decisions on behalf of the individual subject to guardianship and/or conservatorship, the guardian and conservator shall evaluate the alternatives that are available and choose the one that best meets the needs of the individual while placing the least restrictions on the individual's freedom, rights, and ability to control their environment.

403.5 When appropriate, the guardian and conservator will defer to an individual's capacity to make decisions.

403.6 Unless otherwise directed by the court, the guardian and conservator shall provide copies of all material filed with the court and notice of all hearings in the guardianship and/or conservatorship to the individual.

403.7 The guardian and conservator shall, whenever appropriate or required by law, provide other requested information to the individual subject to guardianship and/or conservatorship unless the guardian and conservator is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the individual's estate, property and finances, and (c) medical and other personal information related to the care of the individual.

403.8 The guardian and conservator shall determine the extent to which the individual subject to guardianship and/or conservatorship identifies with particular ethnic, religious, and cultural values and shall consider those values in the guardian and conservator's decision-making to the extent appropriate. The guardian and conservator shall not substitute their moral or religious values, opinions, or philosophical beliefs for those of the individual.

RCW 11.130.325 (1)

403.9 Sexual and Gender Expression:

403.9.1 The guardian and conservator shall acknowledge the rights of the individual subject to guardianship and/or conservatorship to interpersonal relationships, sexual expression, and gender expression. The guardian and conservator shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian and conservator shall take reasonable steps to protect the individual from victimization.

403.9.2 The guardian shall ensure that the individual subject to guardianship is informed of birth control methods and other sexual health information when appropriate.

403.9.3 The guardian shall take reasonable steps to protect the rights of the individual subject to guardianship with regard to sexual expression and gender expression. A review of ethnic, religious, and cultural values may be necessary to uphold the individual's values and customs.

Guardianship and Conservatorship Program Regulations

404 Contact with the Individual Subject to Guardianship and/or Conservatorship

404.1 Guardians or their designees shall have meaningful contact with their clients as needed, generally no less than monthly, unless otherwise authorized by court approval of the guardian's plan or court order. Meaningful contact with the individual under guardianship is to promote the health and well-being of the individual, and, if authorized by the court, the financial affairs of the person, and to stay informed of the individual's status and needs and make decisions that support, encourage, and assist the individual's capabilities and wishes. Meaningful contact may be in-person contact, or via an alternative means of visitation such as: live video conferencing; telephone calls; interviews with third party experts such as medical providers; or interviews with care providers. CPGCs shall continue to document the alternative means of visitation and outreach, along with documentation of the circumstances. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of contact.

404.1.1 The guardian should, when appropriate, assess the individual's physical appearance and condition (taking into account the individual's privacy and dignity) and assess the appropriateness of the individual's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian shall maintain regular communication with the individual, service providers, caregivers, and others attending to the individual.

404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the individual.

404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the individual and take appropriate action to ensure that the service plans are being implemented.

404.2 Conservators or their designees shall maintain meaningful contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements. Meaningful contact with the individual under conservatorship is to stay informed of the individual's status and needs and make decisions that support, encourage, and assist the individual's capabilities and wishes. Meaningful contact may be in-person contact, or via an alternative means of visitation such as: live video conferencing; telephone calls; interviews with third party experts such as medical providers; or interviews with care providers. CPGCs shall continue to document the alternative means of visitation and outreach, along with documentation of the circumstances.

404.3 A certified professional guardian, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every three months is made by a certified professional guardian, unless otherwise approved by the court. A certified professional conservator, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every six months is made by a certified professional conservator unless otherwise approved by the court. For other meaningful visits, a certified professional guardian or conservator, as a sole practitioner or agency, may delegate the responsibility for visits with a client to: (a) a non-guardian/conservator employee of the certified professional guardian or conservator, sole practitioner or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian or conservator with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. Delegation of a power to an agent must be consistent with the guardian and conservator's fiduciary duties and guardian and conservator's plan(s) and other requirements of delegation under RCW 11.130.125 and Regulation 414[1].

RCW 11.130.125

[1]Regulation 414 addresses delegation requirements specified in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act at RCW 11.130.125.

404.4. Each certified professional guardian and conservator or certified professional guardian and conservator agency shall exercise reasonable care, skill, and caution in ensuring a background check is conducted on their own employees, other agents, and any employees of those agents, to the extent the guardian or conservator has delegated a power to such employee or other agent.

RCW 11.130.125 (2) (e)

When determining the scope of a background check, the guardian or conservator should consider the abilities and vulnerabilities of the protected person and the specific task(s) that the employee or agent are being delegated.

A background check must include a criminal history check utilizing public or proprietary databases [2]that are available to the public.

[2] Examples of public or proprietary databases include, but are not limited to, the Washington State Patrol's "Washington Access to Criminal History" (WATCH), Superior Court databases (Odyssey, LINX, ECR Online), Department of Social and Health Services Public Disclosure Office, and the Federal Bureau of Investigations Identity History Summary Check (IdHSC).

Additionally, a background check should include a check of public or proprietary databases that report substantiated findings of abuse, neglect, or exploitation of a vulnerable adult.

When engaging licensed agencies that are required by law or regulation to obtain background checks on their employees, the guardian and conservator may rely on the declaration of the agency that they comply with State background check requirements.

Guardianship and Conservatorship Program Regulations

405 General Decision Standards

All decisions and activities of the guardian and conservator shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian and conservator's determination of the individual's preferences. To determine the decision the individual subject would make if able, the guardian and conservator shall consider the individual's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian and conservator. A guardian and conservator shall make reasonable efforts to ascertain the individual's historic preferences and shall give significant weight to such preferences. Such preferences may be inferred from past statements or action of the individual when the individual had the ability to receive and evaluate information or make and communicate decisions.

405.1.1 In making a decision for an individual subject to guardianship, the guardian shall make the decision the guardian reasonably believes the individual would make if the individual were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the individual.
RCW 11.130.325 (4)

405.1.2 In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual.
RCW 11.130.505 (3)

405.2 When a decision cannot be made under the Substituted Judgment Standard, the guardian and conservator is responsible for making decisions which are in the best interests of the individual.

405.2.1 In determining the best interests of the individual, the guardian and conservator shall consider:

(a) Information received from professionals and persons who demonstrate sufficient interest in the welfare of the individual;
(b) Other information the guardian and conservator believes the individual would have considered if the individual were able to act; and
(c) Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

RCW 11.130.325 (5) RCW 11.130.505 (4)/

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Guardianship and Conservatorship Program Regulations

406 Conflicts of Interest

406.1 The guardian and conservator shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the individual and the individual's estate, property and finances.

406.2 There shall be no self-interest in the management of the estate, property and finances or the management of the personal affairs of the individual by the guardian and conservator. The guardian and conservator shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the individual subject to guardianship and/or conservatorship.

406.3 A conflict of interest arises when the guardian and conservator has some personal, family or agency interest that is self-serving or adverse to the interest of the individual. If the guardian and conservator intends to proceed in the face of a conflict of interest, a guardian and conservator shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4.

406.4 The role of a guardian and conservator is primarily that of a decision-maker and coordinator of services. The guardian and conservator or agency (or an entity in which a guardian and conservator has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the individual or profit from any transaction made on behalf of the individual's estate, property or finances. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval, the guardian and conservator must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical.

406.5 A guardian or conservator who is also an attorney may represent themselves or their agency with respect to the administration of a guardianship or conservatorship. The guardian/conservator and the attorney must submit separate statements to the court for approval of fees and costs.

406.6 A guardian and conservator who is an attorney may provide legal services to the individual subject to guardianship and/or conservatorship only when doing so best meets the needs of the individual and is approved by the court following full disclosure of the conflict of interest.

406.7 A guardian and conservator shall not accept a gift from an individual subject to guardianship and/or conservatorship or from their estate, property or finances, other than ordinary social hospitality.

406.8 Payment of fees or other compensation for guardianship and/or conservatorship services by a party other than the individual subject to guardianship and/or conservatorship is a potential conflict of interest which shall be fully disclosed to the court.

406.9 The guardian and conservator shall protect the individual subject to guardianship and/or conservatorship's rights and best interests against infringement by third parties.

406.10 A guardian and conservator shall not petition, nor request or cause counsel to petition, to be appointed as a guardian and/or conservator unless the guardian and conservator follows the guidelines set out in Ethics Advisory Opinion No. 2005-001. Ethics Advisory Opinion No. 2005-001

406.10.1 If a guardian and conservator has already been appointed to serve as guardian or conservator, and has good cause to believe appointment to the other fiduciary role is necessary to protect the person, or their estate, the guardian or conservator may petition for appointment to the other role.

Guardianship and Conservatorship Program Regulations

407 Residential Decisions

407.1 The guardian shall take reasonable measures to implement the residential preferences of the individual subject to guardianship.

407.2 The guardian shall select a residential setting the guardian believes the individual would select if the individual were able, in accordance with the decision-making standards in RCW 11.130.325 (4) and (5) and Regulation 405. If the guardian does not know and cannot reasonably determine what setting the individual probably would choose if able, or the guardian reasonably believes the decision the individual would make would unreasonably harm or endanger the welfare or personal or financial interests of the individual, the guardian shall choose in accordance with RCW 11.130.325(5) and Regulation 405 a residential setting that is consistent with the individual's best interest.

RCW 11.130.330 (5)

407.3 The guardian shall give priority to a residential setting in a location that will allow the individual to interact with persons important to the individual and meet the individual's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in RCW 11.130.325 (4) and (5) and Regulation 405 .

RCW 11.130.330 (5) (b)

407.4 The guardian shall acknowledge the need to allow all individuals the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the individual's cultural and life values.

407.5 The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions, including:

> 407.5.1 A guardian for an adult shall not initiate the commitment of the adult to an evaluation and treatment facility except in accordance with the provisions of chapter 10.77, 71.05, or 72.23 RCW
>
> RCW 11.130.335 (2)

407.5.2 A guardian may establish or move the permanent place of dwelling of the individual to a care setting that places restrictions on the individual's ability to leave or have visitors only if:

(i) The establishment or move is in the guardian's plan under RCW 11.130.340;
(ii) The court authorizes the establishment or move; or
(iii) The guardian gives notice of the establishment or move at least fourteen days before the establishment or move to the individual and all persons entitled to notice under RCW 11.130.310(5)(b) or a subsequent order, and no objection is filed.

RCW 11.130.330 (5) (d)

407.5.3 A guardian may take action that would result in the sale of or surrender of the lease to the primary dwelling of the individual only if:

(i) The action is specifically included in the guardian's plan under RCW 11.130.340;
(ii) The court authorizes the action by specific order; or
(iii) Notice of the action was given at least fourteen days before the action to the individual and all persons entitled to the notice under RCW 11.130.310(5)(b) or a subsequent order and no objection has been filed

RCW 11.130.330 (5) (f)

407.5.4 The guardian may not establish or move the individual's dwelling outside the state unless consistent with the guardian's plan and specifically authorized by the court.

RCW 11.130.330 (5) (e)

407.6 The guardian shall not remove the individual from his or her home or separate the individual from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the individual resides at the individual's home or in a community setting.

407.7 The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the individual, provide the opportunity to maximize the independence of the individual, and provide for physical comfort and safety.

407.8 Before relocating the individual to a new residence, the guardian shall consult with, and give timely notices as required by law, to the individual, and should consult with, and give timely notices as required by law, to professionals, notice parties, and other third parties who demonstrate sufficient interest in the welfare of the individual to the extent doing so does not put the individual, the guardian, or the guardian's staff at risk of personal harm. Emergency residential decisions to protect the individual may be made without prior consultation.

407.9 The guardian shall, as necessary, thoroughly research and evaluate the individual's residential alternatives.

407.10 Should the only available residential placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to that placement and shall make reasonable efforts to arrange an appropriate and least restrictive residential alternative.

407.11 The guardian shall regularly monitor the individual's residential placement to ensure that it is appropriate and that such placement is the least restrictive alternative. The guardian should consent to changes, as they become necessary, advantageous, or otherwise in the individual's best interests. The guardian should consider that even changes within an existing residential facility may have an impact on the quality of life of the individual.

Guardianship and Conservatorship Program Regulations

408 Medical Decisions

408.1 Unless a power of attorney for health care is in effect, the guardian shall provide informed consent on behalf of the individual subject to guardianship for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits.

> 408.1.1 The guardian shall involve the individual subject to guardianship in health care decision making to the extent reasonably feasible and support the individual in understanding the risks and benefits of health care options to the extent reasonably feasible. RCW 11.130.330 (6) (a)

408.2 Unless authorized by the court in accordance with subsection (4) of this section within the past thirty days, a guardian for an adult may not consent to any of the following procedures for the adult:

(a) Therapy or other procedure to induce convulsion;
(b) Surgery solely for the purpose of psychosurgery; or
(c) Other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.217.
RCW 11.130.335 (3)

408.3 A guardian shall be familiar with laws limiting the authority to consent to health care decisions, including reproductive decision making.

408.4 The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment and other end of life decisions.

408.5 The guardian shall actively promote the health of the individual by arranging for regular preventative care including but not limited to dental care, diagnostic testing, and routine medical examinations to the extent preventative care and resources are available and to the extent the individual is willing to comply.

408.6 The guardian shall be available to respond to urgent need for medical decisions. The guardian shall provide instructions regarding treatment or non-treatment to be followed by medical staff in emergencies.

Guardianship and Conservatorship Program Regulations

409 Financial Management

409.1 A guardian or conservator may only exercise authority over the property and finances of an individual as allowed by statute or ordered by the court.

409.2 The guardian and conservator shall assure competent management of the property, finances and estate of the individual. In the discharge of this duty, the guardian and conservator shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate, property and finances shall be documented by means of accurate and complete records of all transactions.

409.2.1 The guardian and conservator shall meet with the individual and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the individual and to obtain historical information about the individual's prior management of financial affairs.

409.2.2 The guardian and conservator shall, subject to court direction, allow the individual to manage funds to his or her ability when appropriate.

409.2.3 A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the duties as conservator.

RCW 11.130.505 (8)

409.3 The guardian and conservator shall know and obey the law related to managing an individual's estate, property and finances. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.130, and laws relating to employment, income, and taxes. The guardian and conservator shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.

409.4 A guardian shall conserve any funds and other property of the individual not expended for the individual's current needs for support, care, education, health and welfare for the individual's future needs, but if any conservator has been appointed for

the individual, pay the funds and other property at least quarterly to the conservator to be conserved for the individual's future needs.

RCW 11.130.325 (3) (b) (c)

409.6 The guardian and conservator shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

409.7 The guardian and conservator shall manage the estate, property and finances of the individual with the primary goal of providing for the needs of the individual.

409.8 In certain cases, the guardian or conservator shall consider the needs of the individual's dependents for support, care, education, health, or welfare, provided appropriate authority for such support is obtained in advance. The wishes of the individual as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the individual and the advantages and disadvantages to the individual of such support or maintenance.

409.9 When the available estate, property and finances of the individual are sufficient, the guardian and conservator may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the individual, bearing in mind both foreseeable requirements of the individual and the advantages and disadvantages to the individual of such gifts, including tax consequences. If appropriate with decision making standards, the conservator may petition the court to structure the finances of the individual to establish eligibility for a public benefit including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties.

RCW 11.130.435 (o)

409.10 The guardian and conservator should apply for all public and insurance benefits for which the individual is eligible, taking into account the net benefit to the individual's finances and estate and taking into account the preferences of the individual. When implementing necessary changes in the individual's lifestyle, the guardian and conservator shall seek to minimize the stress of any transition.

409.11 Except when inconsistent with the conservator's duties under RCW 11.130.505 (1) through (4) addressing fiduciary duties, self-determination and the individual's retained decision making, the substituted judgment standard, and the best interest standard, a conservator shall invest and manage the conservatorship estate as a prudent investor. The conservator shall periodically review the individual's situation and assets, and make recommendations regarding appropriate investments. The

conservator shall invest and manage the conservatorship estate as a prudent investor by considering:

409.11.1 The circumstances of the individual subject to conservatorship and the conservatorship estate;
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409.11.2 General economic conditions;

409.11.3 The possible effect of inflation or deflation;

409.11.4 The expected tax consequences of an investment decision or strategy;

409.11.5 The role of each investment or course of action in relation to the conservatorship estate as a whole;

409.11.6 The expected total return from income and appreciation of capital;

409.11.7 The need for liquidity, regularity of income, and preservation or appreciation of capital; and

409.11.8 The special relationship or value, if any, of specific property to the individual.

RCW 11.130.505 (5)

409.13 A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

RCW 11.130.505 (7)

409.14 In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator.

RCW 11.130.505 (9)

409.15 A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual, or any other person the conservator or the court determines.

RCW 11.130.515 (3)

409.16 A guardian and conservator shall not commingle the funds of an individual with funds of the guardian and conservator or the funds of staff. A guardian and conservator may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian and conservator has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

409.17 The guardian and conservator shall not borrow from an individual. A guardian and conservator shall not lend funds at interest to an individual.

409.18 The responsibility to protect and preserve the estate, property and finances of an individual rests with the guardian and/or conservator appointed by the court and in accordance with the authority granted by the court to the guardian or conservator respectively.. When the guardian or conservator is an agency, this responsibility is that of the agency and the guardian and/or conservators identified with the Certified Professional Guardianship and Conservatorship Board as the responsible guardian and/or conservators for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian and/or conservator to provide appropriate oversight and review, in order to discharge the guardian and/or conservator’s duties.

409.19 At the death of the individual, the conservator shall comply with RCW 11.130.550 and RCW 11.130.570.

RCW 11.130.550

RCW 11.130.570

409.20 The conservator shall obtain insurance coverage on insurable real and personal property, and maintain insurance on the insured real and personal property, of the individual, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds: (a) The property lacks sufficient equity; or (b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual. A guardian shall obtain and maintain insurance only to the extent the guardian has been granted authority over property of the individual, there are sufficient funds, and it's in the best interests of the individual.

RCW 11.130.505 (10)

Guardianship and Conservatorship Program Regulations

410 Guardian and Conservator Fees and Expenses

410.1 The guardian and/or conservator is entitled to reasonable compensation for services rendered on behalf of the individual subject to guardianship and/or conservatorship. The guardian or conservator has a duty to conserve the estate, property and finances of the individual. Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty.

410.2 All compensation for the services and expenses of the guardian and/or conservator shall be documented, reasonable in amount, and incurred for the welfare of the individual. . Billing for services shall not exceed the typical amounts paid for comparable services in the community, at a rate for which the service can be performed in the most efficient and cost-effective manner. The guardian or conservator shall review each of the following factors in determining the reasonableness of their fee:

410.2.1 The necessity and quality of the services provided;

410.2.2 The experience, training, professional standing, and skills of the guardian or conservator;

410.2.3 The difficulty of the services performed, including the degree of skill and care required;

410.2.4 The conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

410.2.5 The effect of the services on the individual;

410.2.6 The extent to which the services provided were or were not consistent with the guardian's plan or conservator's plan; and

410.2.7 The fees customarily paid to a person that performs a like service in the community.

RCW 11.130.105 (3)

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410.3 A guardian and conservator shall not pay or advance to themselves fees or expenses from any source except as approved by the court. When requesting court approval, the guardian and conservator shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship and/or conservatorship case to the court and to notice parties.

410.4 The guardian and conservator shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

410.5 The duties of a guardian and conservator to an individual subject to guardianship and/or conservatorship are not conditioned upon the person's ability to compensate the guardian and conservator.

410.6 The guardian and conservator may charge fees for time spent opposing a modification, termination, or removal sought by an individual subject to guardianship and/or conservatorship only to the extent the court determines the opposition was reasonably necessary to protect the interests of the individual.
RCW 11.130.105 (7)

Guardianship and Conservatorship Program Regulations

411 Changes of Circumstances/Modification/Termination

411.1 The guardian and conservator has an affirmative obligation to be alert to changes in the individual subject to guardianship and/or conservatorship's condition or circumstances, to seek out information that will provide a basis for termination or modification, and report to the court when a modification or termination in the authority of the guardian and/or conservator should be considered.

411.1.1 A guardian or conservator shall immediately (but not later than thirty days) notify the court if the condition of the individual has changed so that the individual is capable of exercising rights previously removed.

411.1.2 A guardian shall file with the court within thirty days of any substantial change in the condition of the individual under guardianship or any changes in the residence of the individual and shall provide a copy of the notice to the individual and any notice parties.

411.1.3 A conservator shall notify the court within thirty days of any substantial change in the value of the property of the individual subject to conservatorship and shall provide a copy of the notice to the individual, any notice parties, and schedule a hearing for the court to review the adequacy of the bond or other verified receipt.

RCW 11.130.325 (6) (7)

RCW 11.130.505 (13) (14)

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411.2 The guardian and conservator shall assist the individual to terminate or modify a guardianship and/or conservatorship and arrange for independent representation for the individual when necessary.

411.2.1 If an individual seeks to modify or terminate a guardianship and/or conservatorship, or remove the guardian or conservator, the guardian or conservator shall inform the individual of their right to counsel of their choice. The guardian or conservator shall obtain independent counsel if feasible, or request court appointed counsel for the individual.

RCW 11.130.315 (2) (a)

RCW 11.130.355 (7)

RCW 11.130. 425 (2) (a)

RCW 11.130.570 (9)

411.5 If the guardianship and/or conservatorship is a limited guardianship and/or limited conservatorship, the guardian or conservator shall report to the court when there are circumstances in which the individual subject to guardianship and/or conservatorship appears to require assistance which exceeds the authority of the guardian or conservator.

411.6 If only a guardianship has been established, the guardian shall bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the individual's property.

RCW 11.130.325 (3) (a)

411.7 If only a conservatorship has been established, the conservator shall report to the court when protection of the individual through a guardianship or protective arrangement instead of guardianship may be necessary.

Guardianship and Conservatorship Program Regulations

412 Sale or Purchase of Guardianship and/or Conservatorship Practice

412.1 A certified professional guardian and conservator may choose to sell all or substantially all of a guardianship and/or conservatorship practice to another certified professional guardian and conservator, including goodwill, subject to the following guideline: to the extent that the sale of the practice contemplates a substitution of guardian and/or conservator for any of the guardian and conservator's current clients, court approval, with notice to all individuals subject to guardianship and/or conservatorship and all notice parties, shall be obtained at least 60 days before completing the sale. Regardless of whether any sale or transfer occurs, a guardian and conservator remains subject to all of these standards with respect to any individuals the guardian and conservator is appointed for, including the duty to ensure continuity of care, until the guardian and conservator is discharged by the court.

Guardianship and Conservatorship Program Regulations

413 Responsibilities of Certified Professional Guardian and Conservator Agencies

413.1 The designated Certified Professional Guardian and Conservator (CPGC) is responsible for the actions of the agency for which they serve as designated CPGC.

413.2 A CPGC is bound by the Standards of Practice notwithstanding that the professional guardian and conservator acted at the direction of another person.

413.3 A designated CPGC shall make reasonable efforts to ensure that the conduct of non-guardian and conservator agency employees is compatible with the professional obligations of the professional guardian and conservator.

Guardianship and Conservatorship Program Regulations

414 Delegation

414.1 If a Certified Professional Guardian and Conservator (CPGC) delegates a power to an agent, the CPGC shall exercise reasonable care, skill, and caution in:

414.1.1 Selecting the agent

414.1.2 Establishing the scope and terms of the agent's work in accordance with the guardian's plan or the conservator's plan;

414.1.3 Monitoring the agent's performance and compliance with the delegation

414.1.4 Redressing an act or omission of the agent which would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator

414.1.5 Ensuring a background check is conducted on the agent, or conducted on persons employed by the agent when those persons are providing services to the individual subject to a guardianship or conservatorship

RCW 11.130.125 Use of Agent by Guardian or Conservator

When determining the scope of a background check, the guardian or conservator should consider the abilities and vulnerabilities of the protected person and the specific task(s) that the employee or agent are being delegated.

A background check must include a criminal history check utilizing public or proprietary databases [2]that are available to the public.

[2] Examples of public or proprietary databases include, but are not limited to, the Washington State Patrol's "Washington Access to Criminal History" (WATCH), Superior Court databases (Odyssey, LINX, ECR Online), Department of Social and Health Services Public Disclosure Office, and the Federal Bureau of Investigations Identity History Summary Check (IdHSC).

Additionally, a background check should include a check of public or proprietary databases that report substantiated findings of abuse, neglect, or exploitation of a vulnerable adult.

When engaging licensed agencies that are required by law or regulation to obtain background checks on their employees, the guardian and conservator may rely on the declaration of the agency that they comply with State background check requirements.

Guardianship and Conservatorship Program Regulations

415 Record Keeping

415.1 Professional guardian and conservators shall maintain complete and accurate records of all guardianship and/or conservatorship cases for which they are appointed. The records shall be retained for a minimum period of seven (7) years from the earlier of the time the guardianship and/or conservatorship case is closed, or the guardian and conservator’s removal from the case has been approved by the court.

415.2 The designated Professional Guardian and Conservator shall manage the CPGC Agency record keeping so that complete and accurate records are maintained for all guardianship and/or conservatorship cases of the agency. The records shall be retained for a minimum period of seven (7) years from the earlier of the time the guardianship and/or conservatorship case is closed, or the CPGC Agency’s removal from the case has been approved by the court