

Uniform Guardianship,
Conservatorship, and Other
Protective Arrangements Act



Responsibilities of Guardians and
Conservators under the UGA – Part 4

Statutory Responsibilities - Detail



CPG Board - Standards of Practice

- ✓ The Board is revising the Standards of Practice to align with the UGA
- ✓ Regulations 400, 401, 402, 403, 405, 406, 407 and 408 approved as of November 8, 2021 meeting – effective January 1, 2022
- ✓ Regulations 404, 409, 410, 411, 412, 413, 414 and 415 – proposed amendments to regulation have been published for comment; Board will be considering adoption– for January 1, 2022 effective date
- ✓ Board welcomes stakeholder comments

Regulation 400 - General

- References and links within the Standards of Practice – directly to sections
- Authority – is limited to the authority the court has granted
- If any time a court order and a standard of practice conflict – should bring to the attention of the court
- Guardian is a fiduciary and owes the highest duty of good faith and care to the individual
- A conservator has fiduciary duties of prudence and loyalty to the individual

Regulation 401 – Duty to Court

- Standby Guardian is no longer provided for in law with adult guardianship
- (Standby guardian only in minor guardianships)
- Duty to identify a standby guardian with appropriate skills and to make information available to them is deleted, consistent with the statute



Regulation 401 – Duty to Court

- 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 any periodic reports to the court.

When the guardian/conservator is unable to serve

- Co-guardian/co-conservator



- Successor guardian/conservator

- Delegation – limited period of time/limited decisions/how to establish authority

Delegation Requirements

RCW 11.130.125

RCW 11.130.125 Use of agent by guardian or conservator

- Selection
- Scope and Terms
- Monitoring
- Redressing
- Background checks



**Proposed new SOP 414*

Reporting

RCW 11.130.345 Guardian's report—Monitoring of guardianship

(2) A report under subsection (1) of this section must state or contain:...

- (i) If the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

Notice

Remember that RCW 11.130.310 (5) (Order of Appointment) identifies parties entitled to notice of certain events, including:
(c) Notice that the guardian has delegated:


- (i) The power to manage the care of the adult;
- (ii) The power to make decisions about where the adult lives;
- (iii) The power to make major medical decisions on behalf of the adult;
- (iv) A power that requires court approval under RCW 11.130.335; or
- (v) Substantially all powers of the guardian;

Regulation 402 –

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

- 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.
- 402.2 Guardians and conservators where appropriate shall consider views of professionals, relatives and friends of individual. Best interest standard – guardian/conservator shall consider information received from professionals and persons *who demonstrate sufficient interest in the welfare of the individual.*

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

- RCW 11.130.325 (2)/11.130.505 (2) – duty to promote individual's self-determination 
- 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.
- 403.3 – Guardian shall involve individual to extent reasonably feasible in decisions about the individual's care, dwelling, activities, or social interactions

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

- 403.8 The guardian and conservator shall not substitute their moral or religious values, opinions, or philosophical beliefs for those of the individual.
- 403.9.1 Individual's rights to: interpersonal relationships, and sexual expression, and gender expression;
- 403.9.2 Inform individual of birth control methods and other sexual health information when appropriate.
- 403.9.3 Guardian shall take reasonable steps to protect the rights of the individual with regard to sexual expression and gender expression

Change



There is nothing
permanent except
change...
Heraclitus

Regulation 405 – Decision Making Standards

405.1 – Substituted Judgment -

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. e.g. RCW 11.130.325 (4)

Regulation 405 – Decision Making Standards

405.1 .1 and 405.1.2-

- Guardian - unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the individual. 11.130.325 (4)
- Conservator - 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. 11.130.505 (3)

Regulation 405 – Decision Making Standards

- **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.

Conservators – Financial Managements

➤ RCW 11.130.505-Duties of Conservator

(5) Except when inconsistent with the conservator's duties under subsections (1) through (4) of this section, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering: See list of factors for prudent investor


Regulation 406 – Conflicts of Interest

- 406.5 Guardian/Conservators who are also attorneys
- 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.
- i406.10.1 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.


Regulation 407 – Residential Decisions

- ❖ Individual's preferences
- ❖ Substituted Judgment 
- ❖ Best Interest
- ❖ Least restrictive and location near important persons, unless inconsistent with substituted judgment and best interest

Regulation 407 – Residential Decisions

- ❖ 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 
- ❖ May establish or move permanent place of dwelling to a care setting that places restrictions on the individual's ability to leave or have visitors only if...

Regulation 407 – Residential Decisions

- ❖ May take action that would result in the sale of or surrender of the lease to the primary dwelling of the individual only if:....

- ❖ 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.

Regulation 407 – Residential Decisions. Timely Notice of Rights

❖ RCW 11.130.315 (2) The statement must notify the adult subject to guardianship of the right to:

(d) Be notified at least fourteen days before a change in the adult's primary dwelling **or** permanent move to a nursing home, mental health facility, or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under RCW 11.130.340 or authorized by the court by specific order;


Notice After Move – RCW 11.130.330 (5) (c)

Recall that c) Not later than thirty days after a change in the dwelling of the adult the guardian must



- (i) Give notice of the change to the court, the adult, and any other notice party; and
- (ii) Include in the notice the address and nature of the new dwelling and state whether the adult received advance notice of the change and whether the adult objected to the change;

Regulation 408 – Medical Decisions

- ❑ Involve the individual in the decision to the extent reasonably feasible, and to the extent feasible, support the individual in understanding the risks and benefits of health care options 
- ❑ 408.2 Unless authorized by the court in accordance with subsection (4) of this section within the past thirty days...guardian may not consent to.. See list: therapy or other procedure to induce convulsion, surgery solely for the purpose of psychosurgery, other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.217

Regulation 408 – Medical Decisions

- ❑ RCW 11.130.335 (4) Court may order a procedure only after giving notice to the adult's attorney and holding a hearing. If the adult does not have an attorney, the court must appoint an attorney for the adult prior to entering an order on these procedures.

Thank you for your attention!

