

Department of

**ELDER AFFAIRS**

STATE OF FLORIDA



**Office of Public and Professional Guardians (OPPG)**

**Standards of Practice for  
Florida Guardians**

**Florida Administrative Code**

**58M-2.009**

*[https://elderaffairs.org/programs-services/  
office-of-public-professional-guardians-oppg](https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg)*

# STANDARDS OF PRACTICE FOR FLORIDA GUARDIANS

## CHAPTER 58M-2 GUARDIANSHIP

Office of Public and Professional Guardians (OPPG)

<http://elderaffairs.state.fl.us/doea/oppg> (850) 414-2000

- 58M-2.001 Professional Guardian Registration and Credit Investigation
- 58M-2.003 Professional Guardian Coursework and Competency Examination
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### 58M-2.001 Professional Guardian Registration and Credit Investigation.

Applicants must score a minimum of 75% on the Professional Guardian Competency Examination or must receive a waiver pursuant to Section 744.2003(8), F.S., from the Department of Elder Affairs' Office of Public and Professional Guardians (OPPG) before the application for registration will be considered.

- (1) **Definitions.** As used in this rule, the term:
- (a) **“Adverse credit history information”** means the following:
1. Personal bankruptcy within the previous 5 years.
  2. Bankruptcy within the last 5 years of any organization based on events that occurred while the applicant was in a position of control of the organization.
  3. Outstanding tax lien or other governmental lien.
  4. An outstanding judgment or a judgment within the last 15 years that is based upon grounds of fraud, embezzlement, misrepresentation, or deceit.
  5. Open collection account or charged-off account that remains unpaid, except accounts related solely to unpaid medical expenses.
  6. Foreclosure on any property owned by the applicant within the last 5 years.

(b) **“Charged-off”** means an account that has been identified by a creditor as an uncollectable debt.

(c) **“Employee with fiduciary responsibility”** means an employee of a professional guardian who has the ability to direct any withdrawal or investments from a ward’s banking or investment accounts, supervises the care of the ward under the supervision of the guardian, or who makes any health care decision, as defined by Section 765.101(6), F.S., on behalf of the ward. This term shall

also include an employee of a professional guardian who has in-person contact with the Ward more than five (5) times in any thirty (30) day period.

(c) **“Employee with fiduciary responsibility”** means an employee of a professional guardian who has the ability to direct any withdrawal or investments from a ward’s banking or investment accounts, supervises the care of the ward under the supervision of the guardian, or who makes any health care decision, as defined by Section 765.101(6), F.S., on behalf of the ward. This term shall also include an employee of a professional guardian who has in-person contact with the Ward more than five (5) times in any thirty (30) day period.

(2) Persons required to register with the OPPG as a professional guardian must complete the Professional Guardian Registration Form, DOEA/OPPG Form 001, February 2017, which is incorporated herein by reference and may be obtained from the Office of Public and Professional Guardians, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-07916>. The Professional Guardian Employee Registration Form, DOEA/OPPG Form 002, February 2017, which is incorporated herein by reference and may be obtained from the OPPG or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-07917>, must also be completed and submitted for any Professional Guardian Employee with fiduciary responsibility.

- (3) The registration forms for persons required to register with the OPPG shall be signed by the person required to register or corporate officer if the applicant is a corporation.
- (4) The completed registration form shall be filed with the OPPG, by hand-delivery or mail. Facsimile submissions will not be accepted.
- (5) The following items must either accompany the registration form or must be on file with the OPPG, for the registration to be deemed complete:

(a) A complete credit report, including all pages, from a nationally recognized credit agency. A nationally recognized credit agency shall mean a credit agency that obtains credit information both within and outside the State of Florida; validates, updates, and maintains the accuracy of credit information obtained. The report must reflect the financial responsibility of the applicant and provide full, accurate, current, and complete infor-

mation regarding payment history and credit rating.

(b) Criminal history record for guardians as specified in Section 744.3135, F.S.;

(c) Documentation of bonding as required under Section 744.2003, F.S.;

(6) For the initial guardian registration, the applicant must submit proof of satisfactorily completing the entire 40 hour course required by Section 744.2003(3), F.S., which includes attendance at all course activities, completion of all homework assignments and passage of the end of course practice exam. Initial applicants must also provide proof of competency by evidence of satisfactory completion of the Department of Elder Affairs approved examination unless waived in accordance with Section 744.2003(8), F.S. For annual renewals, proof of receipt of the minimum continuing education requirements must be submitted, if not on file.

(7) A registration fee of thirty-five dollars (\$35.00) for each professional guardian or Professional Guardian Employee with fiduciary responsibility in the form of a personal check, money order, or cashier's check made payable to the Office of Public and Professional Guardians must be submitted with the registration form.

(8) Adverse Credit History Information. If an applicant's credit report or responses to the registration application contains adverse credit history information, the OPPG will notify the applicant in writing of the specific items constituting adverse credit history information. The notification will also inform the applicant of the:

(a) Opportunity to explain the circumstances surrounding the specific items and provide any other relevant information that the applicant wishes the OPPG to consider surrounding the specific items;

(b) Documents that the OPPG requires in order to complete its review of the specific items. The requested documents provided by the applicant must be legible. If the documents requested above cannot be obtained, the applicant shall submit evidence of that fact in order for the registration application to be deemed complete. Evidence that documents cannot be obtained shall consist of a written statement from the agency's or creditor's records custodian that is written on the agency's or creditor's letterhead; indicates that the agency or the creditor does not have any record of such matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and provide a statement as to why the record cannot be produced; and is signed by the agency's or creditor's records custodian.

(9) Procedure for Reviewing Adverse Credit History Information.

(a) When deciding whether to approve an application for registration as a professional guardian, the OPPG must make a determination regarding whether the applicant has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OPPG's determination that the applicant will not violate any of the provisions of Chapter 744, F.S. In making this determination, the OPPG will consider the following information:

1. The Applicant's entire credit history as reflected in the credit report.

2. The information provided by the applicant under subsection (8).

3. The responses contained in the registration application.

4. The previous registration history with the OPPG and the Statewide Public Guardianship Office including whether the relevant applicant was named in any regulatory action by those agencies.

5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.

6. The time and context of the information available and any pattern of behavior the information may demonstrate.

(10)(a) The registration period begins the day the registration is approved by the OPPG and ends on the applicant's bond anniversary date. For multi-year bonds, the annual registration expiration date will be determined by the day and month that the bond expires.

(b) The OPPG will prorate the registration fee up to 50% for initial applicants whose bond will expire in less than 6 months.

(11) Annual Renewals: A completed DOEA/OPPG Form 001 for annual renewal of a registration shall be submitted to OPPG at least 30 days prior to the expiration date of the current registration to ensure that a lapse in registration does not occur. All fees must be received with the completed registration form prior to the registration being processed by the OPPG.

(12) If a professional guardian hires an employee with assigned fiduciary responsibilities during the registration period, the professional guardian shall submit an amended DOEA/OPPG Form 001 that includes the new employee information to the OPPG for approval prior to the employee assuming any fiduciary responsibilities.

## 58M-2.003 Professional Guardian Coursework and Competency Examination.

(1) The minimum hours of instruction and training are set out in Section 744.1085(3), F.S. The initial 40 hours of education and training must be approved by SPGO prior to an applicant taking a course. Information about the professional guardian coursework may be obtained from the Statewide Public Guardianship Office or online at <http://elderaffairs.state.fl.us/english/public.html>.

(2) Completion of the required professional guardian instruction and training course is a mandatory requirement in order for the registrant to be eligible to take the competency examination. The exam will be administered by the approved contractor. The contractor will set the examination fee, which cannot by law exceed \$500.00. The examination may be waived in accordance with the criteria in Section 744.1085(8), F.S.

(3) The exam is comprised of two parts: 1) national guardianship ethics and practices, and 2) Florida law and procedure. Registrants must score a minimum of 75% on both parts.

(4) If the registrant fails to successfully complete either portion of the Professional Guardian Competency Examination in three (3) attempts, the registrant shall be required to re-take the instruction and training course prior to being eligible to sit for the competency examination again.

(5) Professional guardians must complete continuing education credits as outlined in Section 744.1085(3), F.S. The SPGO must approve the coursework for all continuing education classes prior to attendance. Proof of completion of the required continuing education hours shall be submitted with the annual renewal registration.

### 58M –2.005 Confidentiality

*Rulemaking Authority 744.1083(6), 744.1085(6)(b) FS Law implemented 744.102(16), 744.1083, 744.1085, 744.3135 FS History-New 12-12-05, Repealed 11-29-11.*

## 58M-2.007 Electronic Fingerprint Criminal History Record Check.

Per Section 744.3135(3), F.S., a professional guardian and their fiduciary employees may use electronic fingerprinting methods. If completing a criminal history record check by electronic fingerprinting, registrants must use a provider on the list maintained by SPGO. This list may

be obtained from the Statewide Public Guardianship Office or at <http://elderaffairs.state.fl.us/english/public.html>.

## 58M-2.009 Standards of Practice

### DEFINITIONS.

(a) In addition to the terms defined in Chapter 744, F.S., the following definitions are applicable in this rule:

1. **“Interested Person”** means a person identified as an interested person in a guardianship proceeding. The meaning as it relates to particular wards may vary from time to time and must be determined by the Court according to the particular matter involved.
2. **“Family” or “Family Member”** means a person or persons who are:
  - a. A relative of an individual within the third degree by blood or marriage, or
  - b. The stepparent of a minor if the stepparent is currently married to the parent of the minor and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the minor’s parents as an adverse party.
3. **“Friend”** means a person who an individual knows and with whom the individual has a bond of mutual affection.
4. **“Abuse”** means any willful act or threatened act by anyone who causes or is likely to cause significant impairment to a Ward’s physical, mental, or emotional health. Abuse includes acts and omissions.
5. **“Neglect”** means the failure or omission on the part of a caregiver, service provider or guardian to provide the care, supervision, and services necessary to maintain the physical and mental health of a Ward, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a reasonably prudent person would consider essential for the well-being of the Ward, under the same or similar circumstances. The term “neglect” also means the failure of a caregiver, service provider or guardian to make a reasonable effort to protect a Ward from abuse, neglect, or exploitation by others.
6. **“Exploitation”** means:
  - a. Knowingly obtaining or using, or endeavoring to obtain or use, a Ward’s funds, assets, or property with the intent to temporarily or permanently deprive the Ward of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the Ward, or

- b. Breach of a fiduciary duty to a Ward by the Ward's guardian which results in an unauthorized appropriation, sale, or transfer of property, or c. Intentionally or negligently failing to effectively use a Ward's income and assets for the necessities required for that Ward's support and maintenance, by the Ward's guardian.

C. Intentionally or negligently failing to effectively use a Ward's income and assets for the necessities required for that Ward's support and maintenance, by the Ward's guardian.

## **(2) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP TO THE COURT.**

- (a) Professional Guardians shall know the extent of the powers and the limitations of authority granted to them by the court and all their decisions and actions shall be consistent with applicable court orders and Florida law. Any action taken by a Professional Guardian pursuant to a court order shall not be deemed a violation of this rule.
- (b) Professional Guardians shall obtain court authorization for actions that are subject to court approval in advance except for emergency situations.
- (c) Professional Guardians shall clarify with the court any questions that the professional guardian has about the meaning of orders or directions from the court before taking action based on the orders or directions.
- (d) Professional Guardians shall seek assistance as needed to fulfill responsibilities to the Wards under their guardianship. Professional Guardians shall disclose to the Court any and all employees or agents hired or assigned to perform tasks or duties related to an active guardianship.
- (e) All payments to Professional Guardians from the assets of a Ward shall be submitted to the court for prior approval and shall follow the requirements of Section 744.108, F.S.
- (f) Professional Guardians shall submit reports regarding the status of their Wards to the court as ordered by the court and as required by Chapter 744, F.S.

## **(3) THE PROFESSIONAL GUARDIAN'S PERSONAL RELATIONSHIP WITH THE WARD.**

- (4) Professional Guardians may not engage in sexual activity with a Ward that violates the provisions of Section 744.20041(1)(n), F.S.

## **(4) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH FAMILY MEMBERS AND FRIENDS OF**

## **THE WARD.**

- (a) Professional Guardians of the person shall allow social interactions between their Wards and their Wards' family and friends in accordance with Section 744.361(13)(b), F.S.
- (b) Professional Guardians shall keep interested persons advised of any pertinent medical issues or decisions when ordered to do so by the Court.

## **(5) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH OTHER PROFESSIONALS AND PROVIDERS OF SERVICES TO THE WARD.**

Professional Guardians shall strive to enhance cooperation between all parties on behalf of their Wards, including all professionals and other service providers.

- (a) Professional Guardians who are not family members of their Wards may not provide any services other than guardianship services to those Wards except in an emergency. Professional Guardians shall coordinate and monitor services needed by Wards to ensure that Wards are receiving the appropriate care and treatment.
- (b) Professional Guardians shall make a good faith effort to cooperate with other surrogate decision-makers for Wards. These include, where applicable, any other guardians, agents under a power of attorney, health care proxies, trustees, U.S. Department of Veterans' Affairs fiduciaries, and representative payees.

## **(6) INFORMED CONSENT.**

- (a) Decisions that Professional Guardians make on behalf of their Wards under guardianship shall be based on the principle of Informed Consent.
- (b) Informed Consent is a decision maker's agreement to a particular course of action based on a full disclosure of the facts needed to make the decision intelligently.
- (c) To have Informed Consent, a decision maker must have adequate information on the issue, must be able to take voluntary action, and must not be coerced.
- (d) In evaluating each requested decision, Professional Guardians shall do the following:
  1. Have a clear understanding of the issue for which informed consent is being sought,
  2. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,

3. Determine the conditions that necessitate treatment or action,

4. Maximize the participation of Wards in understanding the facts and directing a decision, to the extent possible,

5. Determine whether a Ward has previously stated preferences in regard to a decision of this nature,

6. Determine why this decision needs to be made now rather than later,

7. Determine what will happen if a decision is made to take no action,

8. Determine what the least restrictive alternative is for the situation; and,

9. Obtain written documentation of all reports relevant to each decision, if possible.

#### **(7) STANDARDS FOR DECISION-MAKING.**

(a) Professional Guardians shall assist and encourage Wards to participate in decisions, when possible.

(b) Professional Guardians shall, consistent with court orders and state statutes, exercise authority only as necessitated by the limitations of the Ward.

(c) Each decision made by a Professional Guardian shall be an informed decision based on the principle of Informed Consent as set forth in subsection (6).

(d) Professional Guardians shall identify and advocate for the goals, needs, and preferences of their Wards.

1. Professional Guardians shall ask their Wards what they want.

2. If a Ward has difficulty expressing what he or she wants, his or her Professional Guardian shall, to the extent possible, help the Ward express his or her goals, needs, and preferences.

3. When a Ward, even with assistance, cannot express his or her goals and preferences, Professional Guardians shall seek input from others familiar with the Ward to determine what the Ward may have wanted.

4. To the extent that a Ward's goals and preferences have been made known to a Professional Guardian, the Professional Guardian shall honor those goals or preferences, except when following the Ward's goals and preferences would cause significant impairment to a Ward's physical, mental, or emotional health.

(e) Substituted Judgment.

1. Substituted Judgment is a principle of decision-making which requires the guardian to consider the

decision their Ward would have made when the Ward had capacity and use that as the guiding force in any surrogate decision a guardian makes.

2. Substituted Judgment shall be used when making decisions on behalf of a ward except when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health, or when a Professional Guardian cannot establish a Ward's goals and preferences even with support.

(f) Best Interest.

1. Best Interest is the principle of decision-making that should be used only when a Ward has never had capacity, when a Ward's goals and preferences cannot be ascertained even with support, or when following a Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health or his or her property.

2. The Best Interest principle requires a guardian to consider the least restrictive course of action to provide for the needs of a Ward.

3. The Best Interest principle requires guardians to consider a Ward's past practice and evaluate evidence of his or her choices.

4. The Best Interest principle requires the course of action that maximizes what is best for a Ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Ward.

#### **(8) LEAST RESTRICTIVE ALTERNATIVE.**

(a) When making a decision, Professional Guardians shall carefully evaluate the ward's resources and the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of Wards under their guardianship, while placing the least restrictions on their Wards' freedoms, rights, and ability to control their environments.

(b) Professional Guardians shall weigh the risks and benefits of each decision and develop a balance between maximizing the independence and self-determination of Wards and maintaining Wards' dignity, protection, and safety.

(c) Professional Guardians shall make individualized decisions. The least restrictive alternative for one Ward might not be the least restrictive alternative for another Ward.

(d) The following guidelines apply in the determination of the least restrictive alternative:

1. Professional Guardians shall become familiar with the resources available for rights delegated to them including: options for residence, care, medical treatment, vocational training, and education for their wards.

2. Professional Guardians shall strive to know their Wards' goals and preferences.

3. Professional Guardians shall consider assessments of their Wards' needs as determined by specialists. This may include an independent assessment of a Ward's functional ability, health status, and care needs.

#### **(9) SELF-DETERMINATION OF THE WARD.**

- (a) Professional Guardians shall provide Wards under their guardianship with every opportunity to exercise individual rights as they relate to the personal and financial needs of the Ward, as long as that exercise is consistent with court orders regarding the Ward's capacity.
- (b) The Professional Guardian shall, whenever possible, seek to ensure that the Ward leads the planning process. If the Ward is unable to lead the process, the Professional Guardian shall, whenever possible, seek their participation.

#### **(10) THE PROFESSIONAL GUARDIAN'S DUTIES REGARDING DIVERSITY AND PERSONAL PREFERENCES OF THE WARD.**

Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values. To determine these values, Professional Guardians shall consider the following:

- (a) The Ward's attitudes regarding illness, pain, and suffering;
- (b) The Ward's attitudes regarding death and dying;
- (c) The Ward's views regarding quality of life issues;
- (d) The Ward's views regarding societal roles and relationships; and,
- (e) The Ward's attitudes regarding funeral and burial customs.

#### **(11) CONFIDENTIALITY.**

- (a) Professional Guardians shall keep the affairs of Wards under guardianship confidential, unless otherwise provided by law or ordered by the Court.
- (b) Professional Guardians shall respect Wards' priva-

cy and dignity, especially when the disclosure of information is necessary.

- (c) Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- (d) Professional Guardians shall assist Wards in communicating with third parties unless the disclosure will substantially harm the Ward.

#### **(12) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.**

- (a) Professional Guardians appointed guardians of the person shall have the following duties and obligations to Wards under guardianship, unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

1. To see that Wards are living in the most appropriate environment that addresses each Ward's goals, needs, and preferences subject to limitations of his or her financial resources and availability of government benefits,

a. Professional Guardians must prioritize home or other community-based settings, when not inconsistent with a Ward's goals and preferences.

b. Professional Guardians shall authorize moving Wards 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 a Ward, and serves the overall best interest of a Ward.

c. Professional Guardians shall consider the proximity of the setting to those people and activities that are important to Wards when choosing a residential setting.

d. When Professional Guardians consider placement of a Ward in a residential setting, the bases of the decision shall be to minimize the risk of significant impairment to a Ward's physical, mental, or emotional health, to obtain the most appropriate placement possible, and to secure the best treatment for the Ward consistent with Section 744.3215, F.S.

2. To ensure that provision is made for the support, care, comfort, health, and maintenance of Wards, subject to limitations of his or her financial resources and availability of government benefits,

3. To make reasonable efforts to secure for Wards medical, psychological, therapeutic, and social services, training, education, and social and vocational opportuni-

ties that are appropriate and that will maximize Wards' potential for self-reliance and independence, subject to limitations of his or her financial resources and availability of government benefits; and,

4. To report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services Unit and local law enforcement incidents of abuse, neglect and/or exploitation as defined by state statutes within a reasonable period of time. For purposes of this provision the phrase "reasonable period of time" shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

**(13) INITIAL AND ONGOING RESPONSIBILITIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.**

(a) With the proper authority, Professional Guardians appointed guardian of the person shall take the following initial steps after appointment:

1. Professional Guardians shall address all issues of Wards under guardianship that require immediate action.

2. Professional Guardians shall meet with Wards as soon after the appointment as is feasible. At the first meeting, Professional Guardians shall:

- a. Communicate to the Ward the role of the Professional Guardian,
- b. Explain the rights retained by the Ward,
- c. Assess the Ward's physical and social situation,
- d. Assess the Ward's educational, vocational, and recreational needs,
- e. Obtain the Ward's preferences,
- f. Assess the support systems available to the Ward; and,
- g. Attempt to gather any missing necessary information regarding the Ward.

3. After the first meeting with the Ward, the Professional Guardian shall notify relevant agencies and individuals of the appointment of a Professional Guardian, and shall complete the intake process by gathering information and ensuring that applicable evaluations are completed, if appropriate. The Professional Guardian shall:

a. Obtain a psychological evaluation, if appropriate.

b. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts.

c. Establish contact and communicate with the Professional Guardian of the property and/or any other relevant fiduciary for the Ward.

(b) Professional Guardians appointed guardian of the person shall maintain a separate file for each Ward. The file must include, at a minimum, the following information and documents, if available:

1. The Ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, the purpose of each medication, and allergies to medications,

2. Any legal documents, including the order appointing the guardian and letters of guardianship, involving the Ward,

3. Advance directives,

4. A list of key contacts and the contact information for next of kin,

5. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,

6. A list of all medications the Ward is taking, the dosage, and the name of the doctor prescribing the medication,

7. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,

8. The initial guardianship plan and annual plans; and,

9. Assessments regarding the Ward's past and present medical, psychological, and social functioning,

10. Documentation of the Ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service.

(c) Professional Guardians appointed guardian of the person or one of their professional staff shall visit Wards at least quarterly each year.

1. Professional Guardians appointed guardian of the person, if delegated, shall assess the Ward's physical appearance and condition, and if delegated by the Court, the appropriateness of the Ward's current living situation, and the continuation of existing services while



taking into consideration the Ward's resources, all aspects of social, psychological, educational, direct services, and health and personal needs as well as the need for any additional services.

2. Professional Guardians appointed guardian of the person shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

3. Professional Guardians appointed guardian of the person shall examine all services and all charts, notes, logs, evaluations, and other documents regarding Wards at the place of residence and at any program site to ascertain that the care plan is being properly followed.

4. Professional Guardians appointed guardian of the person shall advocate on behalf of the Ward. Professional Guardians appointed guardian of the person shall assess the overall quality of services provided to Wards and seeking remedies when care is found to be deficient.

5. Professional Guardians appointed guardian of the person shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the Ward's current goals, needs, and preferences, including but not limited to:

- a. Evaluating the initial annual plan,
- b. Enforcing residents' rights, legal, and civil rights; and,
- c. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the Ward.

(d) Professional Guardians appointed guardian of the person shall fully identify, examine, and continue to seek information regarding options available to the Ward that will fulfill the Ward's goals, needs, and preferences.

1. Professional Guardians appointed guardian of the person shall take advantage of available professional assistance in identifying all available options for long term services and support.
2. Sources of professional assistance include, but are not limited to Area Agencies on Aging, Centers for Independent Living, protection and advocacy agencies, Long Term Care Ombudsmen, Developmental Disabilities Councils, Aging and Disability Resource Centers, and community mental health agencies.

#### **(14) DECISION-MAKING BY GUARDIAN OF THE PERSON CONCERNING MEDICAL TREATMENT.**

(a) Professional Guardians appointed guardian of the

person shall promote, monitor, and maintain the health and well-being of Wards under guardianship pursuant to their powers and duties as guardian, and in accordance with the Ward's available resources.

(b) Professional Guardians appointed guardian of the person shall ensure that all medical care available to the Ward is appropriately provided.

(c) Professional Guardians, in making health care decisions or seeking court approval for such decisions, shall:

1. Maximize the participation of Wards,
2. Acquire a clear understanding of the medical facts,
3. Acquire a clear understanding of the health care options and the risks and benefits of each option; and,
4. Encourage and support Wards in understanding the facts and directing a decision.

(d) Professional Guardians shall use the substituted judgment standard, as defined in subsection (7), with respect to a health care decision, unless a Professional Guardian cannot determine a Ward's prior wishes, or when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health. Professional Guardians shall use the best interest standard with respect to health care decisions when it is not possible or inappropriate to use the substituted judgment standard.

(e) If possible, Professional Guardians shall determine whether a ward, before the appointment of a Professional Guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by a Ward recorded in medical charts. On finding such documents, Professional Guardians shall inform the court and other interested parties of the existing health care documents.

(f) To the extent a Ward cannot participate in the decision making process, a Professional Guardian appointed guardian of the person shall act in accordance with the Ward's prior general statements, actions, values, and preferences to the extent the Professional Guardian actually knows or should know of them, provided that such preferences are in the Ward's best interest.

(g) If a Ward's preferences are unknown and unascertainable, a Professional Guardian appointed guardian of the person shall act in accordance with information received from professionals and persons who demonstrate interest in the Ward's welfare to determine the Ward's best interests.

(h) Absent an emergency or a Ward's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates a Ward's wishes with respect to a medical intervention, a Professional Guardian appointed guardian of the person and has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria contained in subsections (6) and (7).

(i) In the event of an emergency, a Professional Guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on an assessment of the criteria contained in subsections (6) and (7), within the time allotted by the emergency.

(j) Professional Guardians appointed guardian of the person shall seek a second medical opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to a Ward. Professional Guardians shall obtain a second opinion from a licensed physician.

(k) Professional Guardians appointed guardian of the person shall communicate with the treating medical provider before authorizing or denying any treatment or procedure that has been previously approved.

(l) Professional Guardians appointed guardian of the person shall, in accordance with Section 765.1103(1), F.S., seek to ensure that palliative care is incorporated into all health care, unless not in accordance with a Ward's preferences and values.

#### **(15) DECISION-MAKING CONCERNING WITHHOLDING AND WITHDRAWAL OF MEDICAL TREATMENT.**

(a) If a Ward expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, a Professional Guardian shall follow the wishes of the Ward. If the Ward's past or current wishes are in conflict with each other or are in conflict with what the Professional Guardian feels is in the best interest of the Ward, the Professional Guardian shall have this ethical dilemma submitted to the court for direction.

(b) When making this decision on behalf of a Ward, Professional Guardians shall gather and document information as outlined in subsection (6), and shall follow subsection (7).

#### **(16) CONFLICT OF INTEREST: ANCILLARY AND SUPPORT SERVICES.**

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing, when addressing the needs of Ward's under guardianship. A conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving, or adverse to the position or best interest of a Ward. Self-dealing arises when a Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of the Ward.

(b) Guidelines relating to specific ancillary and support service situations:

1. Professional Guardians may not directly provide housing, medical, or other direct services to a Ward unless the Ward is a Family Member of the Professional Guardian or approved by the court.

a. Professional Guardians shall coordinate and assure the provision of all necessary services to Ward's, other than guardianship services, rather than providing those services directly.

b. Professional Guardians shall be independent from all service providers and must challenge inappropriate or poorly delivered services and advocate on behalf of their Ward's.

c. An exception to subsection (16), shall apply when a Professional Guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services provided that the exception is in the best interest of the Ward. Approval for the exception must be documented and approved by the court.

2. A Professional Guardian who is not a family member of the Alleged Incapacitated Person or acting in an official capacity has a public guardian appointed pursuant to Section 744.2006, F.S., may act as a petitioner for the initial appointment of a guardian only when no other entity is available to act, provided all alternatives have been exhausted.

3. Professional Guardians may not employ their friends or family to provide services for a profit or fee unless no alternative is available and the Professional Guardian discloses this arrangement to the court and the services are provided at the going market rate.

4. Professional Guardians shall neither solicit nor accept incentives from service providers.

5. Professional Guardians shall consider various ancillaries or support service providers and select the providers that best meet the needs of the Ward.

6. Professional Guardians who are attorneys, or employ

attorneys, may provide legal services to Ward's only when doing so best meets the needs of the Ward's and is approved by the court following full disclosure of the potential for conflict of interest. Professional Guardians who are attorneys shall ensure that the services and fees are differentiated and are reasonable.

7. Professional Guardians may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to a Ward under the guardianship, and shall disclose such transactions to the Court and obtain prior court approval.

**(17) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PROPERTY.**

(a) Professional Guardians appointed guardian of the property shall have the following duties and obligations to Ward's under guardianship; unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

(b) When making decisions Professional Guardians appointed guardian of the property shall:

1. Give priority to the goals, needs, and preferences of the Wards; and,

2. Weigh the costs and benefits to the estate.

(c) Professional Guardians appointed guardian of the property shall consider the current wishes, past practices, and evidence of likely choices of their wards. If substantial harm to a Ward's physical, mental, or emotional health would result or there is no evidence of likely choices, Professional Guardians appointed guardian of the property shall consider the best interests of the Ward.

(d) Professional Guardians shall assist and encourage Wards to participate in decisions to the extent they are capable and not inconsistent with court order.

(e) Professional Guardians appointed guardian of the property shall provide management of Wards' property and shall supervise all income and disbursements of the Ward.

(g) Professional Guardians appointed guardian of the property shall manage the estate only for the benefit of the Ward or as directed by the Court.

(h) Professional Guardians appointed guardian of the property shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate during the time of the Professional Guardian's appointment by the Court.

(i) Professional Guardians appointed guardian of the property shall keep estate money separate from their

personal money.

(j) Professional Guardians appointed guardian of the property shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise to manage the estate.

(k) If possible, Professional Guardians appointed guardian of the property shall determine if a will exists and obtain a copy to determine how to manage estate assets and property as their Wards would have done when they had capacity.

(l) Professional Guardians appointed guardian of the property shall report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services and local law enforcement incidents of abuse, neglect, and/or exploitation within a reasonable period of time under the circumstances. For purposes of this provision the phrase "reasonable period of time" shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

**(18) PROFESSIONAL GUARDIAN OF THE PROPERTY: INITIAL AND ONGOING RESPONSIBILITIES.**

(a) With the proper authority, the initial steps after appointment as Professional Guardian of the property are as follows:

1. Professional Guardians shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.

a. Professional Guardians shall ascertain the income, assets, and liabilities of the Ward.

b. Professional Guardians shall ascertain the goals, needs, and preferences of the Ward.

2. Professional Guardians shall meet with Wards under guardianship as soon after the appointment as feasible. At the first meeting, Professional Guardians shall:

a. Communicate to the Ward the role of the Professional 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.

3. Professional Guardians shall file all tax returns, 1099s, and other forms on behalf of their wards as required by the Internal Revenue Service.

4. Professional Guardians shall develop and implement a budget for the management of income and assets that corresponds with the care plan for the Ward, if any, and aim to address the goals, needs, and preferences of the Ward. Professional Guardians of the property and the Professional Guardian of the Person (if one exists), or other health care decision-maker, shall communicate regularly and coordinate efforts with regard to the care and budget, as well as other events that might affect the Ward.

a. The budget shall include a listing of all of the Ward's known assets, monthly income and whether the Ward's finances are sufficient for the services the Ward needs, and are flexible enough to deal with the changing status of the Ward. The budget shall also include a listing of all of the Ward's recurring monthly expenses, including but not limited to housing, clothing, medical, health insurance, entertainment, and transportation costs.

b. Professional Guardians shall prioritize the well-being of Wards over the preservation of the estate.

c. Professional Guardians shall maintain the goal of managing, but not necessarily eliminating, risks.

5. Professional Guardians shall assess the feasibility of pursuing all public and insurance benefits for which Wards may be eligible.

6. Professional Guardians shall document the management of the estate and the carrying out of any and all duties required by statute or regulation.

7. Professional Guardians shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by Wards known to the Professional Guardian and must be in accordance with Section 744.365, F.S., and Florida Probate Rule 5.620.

8. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable and consistent with Florida Probate Rule 5.696.

9. Professional Guardians shall oversee the disposition of Wards' assets subject to the Professional Guardian's control to qualify Wards for any public benefits program after obtaining Court approval.

10. On the termination of the guardianship or the death of a Ward, Professional Guardians shall facilitate the

appropriate closing of the estate and submit a final accounting to the court.

11. The Professional Guardian appointed guardian of the property shall maintain a separate file for each Ward. The file must include, at minimum, the following information and documents, if available:

a. The Ward's name, date of birth, address, telephone number, Social Security number,

b. Any legal documents, including among others the order appointing the guardian and the letters of guardianship, involving the Ward,

c. A list of key contacts and the contact information for next of kin,

d. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,

e. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,

f. The initial inventory and annual accountings; and,

g. Documentation of any goals or preferences expressed by the Ward that have been made known to the Professional Guardian and would require the expenditure of the Ward's assets in excess of \$1,000.00, and the date, time, location and individuals present when the goal or preference was expressed by the Ward.

12. Professional Guardians shall, when appropriate, open a burial trust account and/or make funeral arrangements for Wards.

(b) Professional Guardians appointed guardian of the property shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

## **(19) PROPERTY MANAGEMENT.**

(a) When disposing of a Ward's assets, pursuant to Section 744.441, F.S., a Professional Guardian appointed guardian of the property must seek court approval and notify interested persons as required by Chapter 744, F.S.

(b) In the absence of evidence of a Ward's wishes before the appointment of a Professional Guardian, Professional Guardians appointed guardian of the property, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of a ward, or an interest in that property, unless doing so is in the best interest of the Ward.

(c) In considering whether to dispose of a Ward's property, Professional Guardians appointed guardian of the property shall consider the following:

1. Whether disposing of the property will benefit or improve the life of the Ward,

2. The likelihood that the Ward will need or benefit from the property in the future,

3. The previously expressed or current desires of the Ward with regard to the property to the extent that they are known to the Professional Guardian,

4. The provisions of the Ward's estate plan as it relates to the property, if any,

5. The tax consequences of the transaction,

6. The impact of the transaction on the Ward's entitlement to public benefits,

7. The condition of the entire estate,

8. The ability of the Ward to maintain the property,

9. The availability and appropriateness of alternatives to the disposition of the property,

10. The likelihood that property may deteriorate or be subject to waste,

11. The benefits versus the liability and costs of maintaining the property; and,

12. Any other factor that may be relevant to the disposition of the Ward's property.

(d) Professional Guardians appointed guardian of the property shall consider the necessity for an independent appraisal of real and personal property.

(e) Professional Guardians appointed guardian of the property shall obtain insurance coverage, as appropriate, for property in the estate.

**(20) CONFLICT OF INTEREST: ESTATE, FINANCIAL, AND BUSINESS SERVICES.**

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing when addressing the needs of Wards under guardianship. Impropriety or conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of a Ward. Self-dealing arises when the Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of a Ward.

(b) Professional Guardians appointed guardians of the

property shall not commingle personal or program funds with the funds of Wards.

(c) With the exception of funds associated with Wards served by offices of public guardian established pursuant to Section 744.2006, F.S., Professional Guardians appointed guardians of the property shall not consolidate or maintain Wards' funds in joint accounts or with the funds of other Wards.

(d) Professional Guardians appointed guardian of the property may not sell, encumber, convey, or otherwise transfer a Ward's real or personal property or any interest in that property to himself or herself, a spouse, a family member, a friend, a coworker, an employee, a member of the board of the agency or corporate Professional Guardian, an agent, or an attorney, or any corporation or trust in which the Professional Guardian, a friend of the Professional Guardian or a family member of the professional guardian has a substantial beneficial interest.

(e) Professional Guardians appointed guardian of the property may not loan money or objects of worth from a Ward's estate unless specific prior approval is obtained from the court.

(f) Professional Guardians appointed guardian of the property may not use a Ward's income and assets to directly support or directly benefit other individuals unless specific prior approval is obtained from the court.

(g) Professional Guardians may not borrow funds from a Ward.

(h) Professional Guardians may not lend funds to a Ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the Ward's benefits, and the transaction is approved by the court.

(i) Professional Guardians may not profit from any transactions made on behalf of a Ward's estate at the expense of the estate, nor may the Professional Guardian compete with the estate, unless prior approval is obtained from the court. This provision shall not preclude the payment of fees to a Professional Guardian from the assets of a Ward that are associated with the performance of the duties of a guardianship.

(j) Professional Guardians shall not give anything of monetary value associated with a guardianship referral.

**(21) TERMINATION AND LIMITATION OF PROFESSIONAL GUARDIANSHIP.**

- (a) Professional Guardians shall assist Wards under guardianship to develop or regain the capacity to manage their personal and financial affairs, if possible.
- (b) Professional Guardians shall seek termination or limitation of the guardianship in the following circumstances:

1. When the Professional Guardian believes a Ward has developed or regained capacity in areas in which he or she was found incapacitated by the court,
2. When less restrictive alternatives exist that have not been previously addressed by the Court exist,
3. When a Ward expresses the desire to challenge the necessity of all or part of the guardianship,
4. When a Ward has died, or
5. When a guardianship no longer benefits the Ward; and,
6. When the Ward cannot be located after a diligent search.

#### **(22) PROFESSIONAL GUARDIANSHIP SERVICE FEES.**

- (a) All fees related to the duties of the guardianship must be reviewed and approved by the court. Professional Guardians shall apprise the court of all fees paid to Professional Guardians relating to guardianship services, including fees paid from sources outside of the guardianship. Fees must be reasonable and be related only to guardianship duties. Petitions for Professional Guardian fees must include the source of payment (e.g. guardianship, trust, etc.), if known.
- (b) Fees or expenses charged by a Professional Guardian shall be documented through billings maintained by the Professional Guardian as required by Section 744.108, F.S., which shall clearly and accurately state:
  1. The date and time spent on a task,
  2. The duty performed,
  3. The expenses incurred,
  4. The third parties involved; and,
  5. The identification of the individual who performed the duty (e.g., guardian, staff, volunteer).
- (c) All parties should respect the privacy and dignity of the person when disclosing information regarding fees

#### **(23) MANAGEMENT OF MULTIPLE PROFESSIONAL GUARDIANSHIP CASES.**

Professional Guardians shall limit his or her caseload to allow the Professional Guardian to properly carry out his or her duties for each Ward within statutory guidelines.

### **58M-2.011 Disciplinary Action and Guidelines.**

- (1) Purpose. Pursuant to Section 744.20041, F.S., the Office of Public and Professional Guardians provides disciplinary guidelines in this rule for applicants or guardians over whom it has oversight. The purpose of this rule is to notify applicants and guardians of the range of penalties which will routinely be imposed, unless the Office of Public and Professional Guardians finds it necessary to deviate from the guidelines for the stated reasons given in this rule. The range of penalties are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violations may result in a higher penalty. Each range includes the lowest and highest penalties that may be imposed for that violation. For applicants, all offenses listed in the Disciplinary Guidelines are sufficient for refusal to certify an application for registration. The Office of Public and Professional Guardians may find it necessary to deviate from the guidelines for the reasons stated in subsection (3), of this rule.
- (2) Violations and Range of Penalties. In imposing discipline upon applicants and guardians, the Office of Public and Professional Guardians shall act in accordance with guidelines and shall impose a penalty within a range corresponding to the violations set forth in form DOEA/OPPG Form 003, Office of Public and Professional Guardians Disciplinary Guidelines (February 2017), incorporated herein by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-07914>, unless the Office of Public and Professional Guardians finds it necessary to deviate from the guidelines for the stated reasons given in subsection (3), of this rule.
- (3) The Office of Public and Professional Guardians shall take into consideration the danger to the public; the number of repetitions of offenses; the length of time since the date(s) of violation; the number of disciplinary actions taken against the guardian; the length of time the guardian has practiced; the actual damage, physical or otherwise, to the ward; the deterrent effect of the penalty imposed; any efforts for rehabilitation; and any other mitigating or aggravating circumstances in determining the appropriate disciplinary action to be imposed.

## OFFICE OF PUBLIC AND PROFESSIONAL GUARDIANS (OPPG)

The Office of Public & Professional Guardians (OPPG), housed within the Department of Elder Affairs, appoints local public guardians to provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and there are no willing family or friends to serve. The OPPG, which contracts with 16 local Offices of Public Guardianship throughout Florida, is also responsible for the registration and education of professional guardians.

Since 2016, the OPPG has expanded its responsibilities to include oversight and regulation of approximately 550 or more professional guardians statewide, which includes investigating, and if appropriate, disciplining the guardians in violation of law.

The OPPG can be reached by calling (850) 414-2381 or by email at [OPPGinfo@elderaffairs.org](mailto:OPPGinfo@elderaffairs.org).

### PROGRAMS AND SERVICES

- Professional Guardians must meet certain requirements to register with the state of Florida.

For more information and a complete guide to the Professional Guardian Registration, please click <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/professional-guardian-registration/>

- The OPPG established a statewide toll-free hotline to receive complaints made against registered professional guardians. The hotline number is: 1-855-305-3030. In addition, complaints can be submitted via email or mail.

- The Department contracts with 16 public guardianship offices statewide, providing public guardianship services to vulnerable adults that meet the following criteria:
- The person (referred to as a “ward”) must be indigent;
- The ward may not have any friends or family that are willing or able to serve; and
- The person must be adjudicated incapacitated under Chapter 744, Florida Statutes, or eligible for a Guardian Advocate under s. 393.12, Florida Statutes.

For more details on the 16 public guardians, please go to: **[Florida Public Guardian Programs](https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/florida-public-guardian-programs/)**  
<https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/florida-public-guardian-programs/>

### File A Complaint

Florida Statue Chapter 744, requires that the Office of Public and Professional Guardians establish a procedure to review, and if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians.

To submit a complaint via email, please send it to: [OPPGcomplaints@elderaffairs.org](mailto:OPPGcomplaints@elderaffairs.org) or by phone, call us at 855-305-3030

Department of Elder Affairs  
Office of Public and Professional Guardians  
Attn: Complaints  
4040 Esplanade Way  
Tallahassee, FL 32399-7000