

## Chapter 10

### Public Guardianship for the Elderly Program

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## Chapter 10

### Public Guardianship for the Elderly Program

#### 10-1: Authority

The Public Guardianship for the Elderly Program (hereinafter the “program”) was created under Tenn. Code Ann. § 34-7-103 to provide guardianship for the elderly. The program shall be administered by the Tennessee Commission on Aging and Disability (TCAD), which shall adopt policies and may promulgate rules to govern the operation of district public guardians within each development district and implement the law. TCAD shall provide a coordinator to monitor program development and operation and shall contract with the grantee agencies in each of the nine (9) development districts which are the planning and service areas designated by the commission. Each grantee agency in the nine (9) development districts shall hire staff to serve as district public guardian in the planning and service area.

#### 10-2: Description of the Public Guardianship for the Elderly Program

The program is a statewide program that is available to adults age 60 and over who, due to physical or mental limitations, are unable to make personal decisions regarding their health and safety, manage their resources, or who have become susceptible to fraud or undue influence, and have no family member, friend, bank, or corporation willing and able to act on their behalf. Tenn. Code Ann. 34-7-103. The program is funded by the State of Tennessee and is available in all 95 counties. The program’s district public guardians and staff members are held to the same standards as conservators and guardians generally as outlined in Tenn. Code Ann. § 34-1-101 and 34-2-101, et. seq.

**10-3: Administrative Requirements**

- (1) Tennessee Commission on Aging and Disability (TCAD) shall:
- (a) Employ a staff person, who serves as the State Public Guardianship Program Coordinator (hereinafter the “state coordinator”) to oversee program development, program operations, program monitoring, and program implementation.
  - (b) Contract with the grantee agency of the Area Agency on Aging and Disability (AAAD) in each of the nine (9) planning and service areas (PSA) for implementation of the program to provide service in all of the counties included in their respective PSAs.
  - (c) Purchase a statewide bond to cover the district public guardians and other identified staff.
  - (d) Annually establish and distribute a sliding fee scale to the courts and other agencies for the program. Tenn. Code Ann. § 34-7-103, Tenn. Code Ann. § 34-7-104-(D) (1).
  - (e) Comply with Internal Revenue Service Publication 1075, and all relevant federal and state laws, regulations, rules, policies and procedures to obtain state and national criminal history background checks and investigations for ALL employees and contractors who have access to federal tax information. At a minimum, all district public guardians and Assistant Public Guardians must undergo this background check. Tenn. Code Ann. § 4-3-1, et. seq.
  - (f) Develop, implement and periodically review a public guardian funding formula.

**10-4: State Public Guardian Coordinator Requirements:**

- (1) State coordinator shall:
- (a) Provide initial orientation training, and ongoing training and technical assistance and materials to district public guardians.
  - (b) Maintain standards and policies for the program.

- (c) Provide quality assurance oversight and monitoring to ensure compliance with TCAD standards policies and procedures.

**10-5: Area Agency on Aging and Disability Requirements**

- (1) The AAAD shall:
  - (a) Comply with all statutory, administrative, and other requirements, standards and rules established by TCAD for the implementation of the statewide guardianship program.
  - (b) Employ, at a minimum, one-full time district public guardian.  
The district public guardian shall be responsible for the day-to-day operations of the Program.
  - (c) Ensure that all staff functions with responsibilities for the program are covered under the statewide bond. Shall inform the State Public Guardian of any changes to the positions covered by the blanket bond within 48 hours.
  - (d) Require the designated district public guardian and, as appropriate, other program staff to attend all training specified by TCAD.
  - (e) Provide adequate supervisory assistance, office space, supplies, and support for the program.
  - (f) Develop and maintain district written policies and procedures consistent with and approved by TCAD.
  - (g) Have a signed contractual agreement (that is updated annually) with an attorney(s) to represent the program as the attorney of record in guardianship issues and shall provide the state coordinator with a copy of the contract.
  - (h) The AAAD shall comply with all federal and state laws, and TCAD policy and procedural requirements requiring background checks on all employees and contractors with contact and access to client federal tax information. Tenn. Code Ann. § 4-3-1, et. seq.
  - (i) Notify the state coordinator within 48 hours, if any person in the district public guardian program has been alleged to abuse, neglect, exploit any clients or is suspected of suspicion of fraud or waste of clients in the program.

- (j) The Grantee Agency must notify the state coordinator within 48 hours of the resignation of a district public guardian. If the district public guardian resigns without a named replacement, the Grantee Agency must submit a written plan to the state coordinator for replacement of the district public guardian and identify an interim point of contact to serve guardianship clients within 48 hours of the resignation date of the district public guardian.
- (k) Ensure that all accounting functions are conducted by appropriate fiscal staff.

**10-6: District Public Guardian Requirements**

- (1) The district public guardian shall:
  - (a) Serve as conservator for disabled adults 60 years of age and over that have no family members or other person, bank or corporation willing and able to serve as conservator.
  - (b) Not have any power or authority beyond that set forth for a conservator generally outlined in Tenn. Code Ann. §34, 1—101, 34-2-101, et. seq.
  - (c) Maintain records and submit reports according to TCAD requirements utilizing TCAD reporting forms noted below:
    - i. PG Intake Application - 1
    - ii. PG Client Monthly Visit Report- 2
    - iii. PG Volunteer Client Monthly Visit Report- 3
    - iv. PG Folder Order Report - 4
    - v. PG Notes-Activity Log Report- 5
    - vi. PG Client Information Report - 6
    - vii. PG Tax Return Report – 7
    - viii. PG Monthly Report– 8
    - ix. Inventory Report – 9
    - x. Cap Request Application - 10
  - (d) Establish and maintain working relationships with local offices of ombudsman and legal services, division of adult protective services of the Tennessee Department of Human Services, Social Security Administration (SSA), and

Veteran's Administration (VA) as well as the local bar associations, courts, and other agencies as indicated for the purpose ensuring coordination with those offices and agencies.

- (e) Clients requiring placement in a long-term or residential facility must be admitted to and housed in a licensed facility. If placement in a licensed facility is not available in the district or cannot be found, the district public guardian shall immediately notify the state coordinator. The district public guardian shall continue to seek other means to ensure appropriate placement in a licensed facility. The district public guardian shall notify the state public guardian coordinator within twenty-four (24) hours upon notification of closure of a licensed or care providing facility whereby the client has to be displaced or relocated.
- (f) Establish a network of professional and lay people who offer services necessary to develop a comprehensive program and professional expertise.
- (g) Complies with confidentiality guidelines and agreement governing client files and release of information. Establish and maintain a confidentiality agreement governing the use and release of client information and files.
- (h) Possess the minimum education, experience and certification requirements for district public guardians:
  - i. Bachelor's degree in human services or related field and
  - ii. at least two (2) years of successful employment in a field related to public guardianship activities, such as social services, law, financial institutions, and/or health care or other related fields.
  - iii. Staff who are currently employed in a district public guardianship position who do not possess the minimum education requirement as of January 1, 2020, are exempt from this requirement.
  - iv. Within two (2) years from the date of employment as a district public guardian, or assistant district public guardian, he or she shall obtain certification as a registered guardian through the Center for Guardianship Certification and utilize the NGA Review Course for the national certification exam as preparatory material.
- (i) Provide a list of all clients served during the previous calendar year by January

20<sup>th</sup> of each year to the State Public Guardian Coordinator.

- (j) Continue to seek a family member, friend or other person, bank or corporation qualified and willing to serve as conservator and if such is found, submit a motion to the court for appointment of the qualified and willing successor.
- (2) Code of Ethics  
All Public Guardians and Assistant Public Guardians shall adhere to the following Code of Ethics. All staff members involved in the program should adhere to this Code of Ethics as well. This Code of Ethics is taken from the National Guardianship Association (NGA) Ethical Principles.

NGA Code of Ethics

- (a) A guardian treats the person with dignity.
- (b) A guardian involves the person to the greatest extent possible in all decision-making.
- (c) A guardian selects the option that places the least restrictions on the person's freedom and rights.
- (d) A guardian identifies and advocates for the person's goals, needs, and preferences.
- (e) A guardian maximizes the self-reliance and independence of the person.
- (f) A guardian keeps confidential the affairs of the person.
- (g) A guardian avoids conflicts of interest and self-dealing.
- (h) A guardian complies with all laws and court orders.
- (i) A guardian manages all financial matters carefully.
- (j) A guardian respects that the money and property being managed belong to the person.

**10-7: Training requirements**

- (1) New district public guardians and assistant district public guardian shall:
  - (a) Complete the NGA Fundamentals Series distributed by the NGA within forty-five (45) days of hire.
  - (b) Complete training in Tennessee conservator and guardianship law with the state coordinator and/or TCAD legal counsel within one (1) month of hire and prior to officially exercising the duties and powers of a district public guardian.
- (2) All district public guardians shall:

- (a) Attend mandatory annual training sponsored by TCAD.
- (b) Attendance at the annual Conservatorship Association of Tennessee conference is strongly encouraged; however, it is not mandatory.
- (c) Attendance at the annual National Guardianship Association conference is strongly encouraged; however, it is not mandatory.

**10-8: Requirements of District Public Guardianship for the Elderly Program**

The requirements of the program shall be followed by each district public guardian and program staff member to ensure that the program operates statewide in a consistent and uniform manner.

**(1) Guardianship**

Guardianship through the program for adults age 60 and over who are unable to make financial and/or health care decisions for themselves are appropriate when ordered by a court of competent jurisdiction. Guardianship is a legal process that removes considerable rights from the adult and should only be considered if alternatives to guardianship have proven ineffective or is unavailable. In addition, the program may serve as the attorney in fact under durable power of attorney for finances and/or health care. Program staff are held to the same standards as conservators and guardians generally as outlined in Tenn. Code Ann. § 34-1-101 and 34-2-101, et. seq.

**(2) Types of Guardianship**

**Person Only**

When appointed as the conservator for Person only, the guardian/conservator is permitted to make decisions related to healthcare, residence, etc. as set forth in the Order of Appointment for the client. Tenn. Code Ann. § 34-3-107 (4)

**Property Only**

When appointed as the conservator for Property/Finances only, the guardian/conservator is permitted to make decisions related to financial matters as set forth in the Order of Appointment for the client. Tenn. Code Ann. § 34-3-107 (4)

**Person and Property**

When appointed as the guardian/conservator for Person and Property, the guardian/conservator is permitted to make all decisions for the client as set forth in the Order of Appointment. Tenn. Code Ann. § 34-3-107 (4)

**(3) Types of Power of Attorney****Power of Attorney**

When serving a client as attorney-in-fact under a Power of Attorney (POA), the district public guardian is permitted to make all decisions as designated by the client and set forth in the signed Power of Attorney document. The district public guardian may accept appointments under such documents that comply with the statutory provisions of Tenn. Code Ann., §34-6-101 et. seq and Tenn. Code Ann. §34-6-201, et. seq.

**Durable Power of Attorney**

When serving a client as attorney-in-fact under a Durable Power of Attorney (DPOA), the district public guardian is permitted to make all decisions regarding finances and/or health care. A DPOA is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or similar words. The legal document should specify the powers of the attorney-in-fact and should always be "durable", allowing it to remain in effect in case of disability. The district public guardian may accept appointments under such documents that comply with the statutory provisions of Tenn. Code Ann. §34-6-102 and Tenn. Code Ann., §34-6-109 et. Seq. To transfer a power of attorney from one agent to another, the district public guardian may need to revoke the original power of attorney document and write a new one. The district public guardian shall not co-mingle or transfer assets from the principal to the program's general fund.

**10-9: Case Handling Guidelines**

1. Intake
2. Initial Petition
3. Effective Date of Guardianship
4. Property Management Plan
5. Inventory
6. Six Month or Interim Accounting
7. Annual Accounting
8. Annual Status Report
9. Preliminary Final Accounting
10. Final Accounting and Order
11. Making Decisions for Clients

**1. Intake Application**

Programs may require persons or entities seeking Public Guardianship service to complete an intake application prior to appointment by the court. Acceptance of an application is contingent upon the program's receipt of all documentation necessary to establish eligibility. However, upon receipt of a sufficient application, if the potential client is age 60 or older has no one else willing or able to serve as a conservator and the program does not have a temporary cap approved by TCAD, the program shall accept cases referred to the program.

**2. Initial Petition**

- (a) Tenn. Code Ann. §34-3-102 (2014) requires that “[a] petition for the appointment of a conservator may be filed by any person having knowledge of the circumstances necessitating the appointment of a conservator.”
- (b) The program may not file an initial petition requesting appointment as the guardian for a potential client.
- (c) The priority of the individuals to be appointed as the conservator is established in Tenn. Code Ann., §34-3-103: “[t]he court shall consider the following persons in the order listed for appointment of the conservator:
  - i. “The person or persons designated in writing signed by the alleged person with a disability;

- ii. The spouse of the person with a disability;
  - iii. Any child of the person with a disability;
  - iv. Closest relative or relatives of the person with a disability;
  - v. A district public guardian as described by § 34-7-104; and
  - vi. Other person or persons.”
- (d) In the initial petition and any subsequent court filings, the program serving the county in which the client resides must be listed as the Guardian/Conservator. The individual district public guardian can be listed as the agent.
- (e) The initial petition for the appointment of a conservator should contain (among other requirements) “the name, age, mailing address, relationship of the proposed conservator and a statement of any felony or misdemeanor conviction of the proposed conservator and, if the proposed conservator is not the petitioner, a statement signed by the proposed conservator acknowledging awareness of the petition and a willingness to serve”. Tenn. Code Ann. §34-3-104.
- (f) When notified by the court, the district public guardian or his/her designee (not necessarily the retained attorney) shall make reasonable efforts to personally attend all hearings addressing the appointment of the program. When hearings are scheduled for the same date and time, the district public guardian shall notify the court of the conflict and attempt to make alternative arrangements.
- (g) The district public guardian shall be available and accept cases previously reviewed and acknowledged upon appointment by the court for potential clients age 60 or older where there is no one else willing or able to serve as a conservator; unless TCAD has approved a temporary caseload cap.

### **3. Effective Date of the Guardianship**

The appointment becomes effective upon the entry of an order appointing the district public guardian. Upon the administration of the statutory oath and the posting of any required bond, the clerk will issue letters of conservatorship. These letters of conservatorship **MUST** be obtained from the clerk’s office as they are the only effective evidence of the appointment. See T. C. A. §34-1-109.

### **4. Property Management Plan**

Generally, the Property Management Plan is submitted to the court at hearing for

the appointment of the fiduciary and if not, this Plan must be submitted to the Court before any property is invested. Tenn. Code Ann. 34-1-115(b). This plan must include all information required by the court, including but not limited to, the client's income, expenses, property, and assets owned.

## **5. Inventory**

- (a) An Inventory of all the client's assets and personal property must be completed within sixty (60) days after appointment as Guardian and filed with the Court. Tenn. Code Ann. 34-1-110(a)
- (b) PG form 5 must be used to record and make notes regarding the contents of the client's home.
- (c) PG form 5 must be retained in the client's file.
- (d)

## **6. Six Month or Interim Accounting**

- (a) This accounting must be filed with the Court within thirty (30) days after the six-month anniversary of appointment as Guardian. Tenn. Code Ann. 34-1-111(a)
- (b) The Six Month or Interim Accounting must contain all the information required by statute.
- (c) Some Courts may require that the Six Month or Interim Accounting follow a certain format and/or contain certain information. All programs should know the format required by the courts in their District and ensure that all Six Month or Interim Accountings comply with these requirements.

## **7. Annual Accounting**

- (a) The Annual Accounting must be filed with the Court within sixty (60) days after each anniversary of the date of appointment as Guardian by month end. If an alternate accounting period is selected, the Guardian shall file a statement with the Clerk advising of the accounting period selected. The accounting period shall not exceed twelve (12) months. Tenn. Code Ann. 34-1-111(b).
- (b) The Annual Accounting must contain ALL information required by statute. Some Courts may require that the Annual Accounting follow a certain format and/or contain certain information. All programs should know the format

required by the courts in their District and ensure that all Annual Accounting comply with these requirements.

### **8. Annual Status Report**

- (a) An Annual Status Report must be submitted for all clients. Tenn. Code Ann. 34-1-111(D)(2)
- (b) The accounting shall contain a statement concerning the physical or mental condition of the person with a disability and demonstrate to the court the need or lack of need for the continuation of Guardianship services.
- (c) The Annual Status Report can (and should) be included as a separate section of the Annual Accounting if an Annual Accounting is filed.

### **9. Preliminary Final Accounting**

- (a) The Preliminary Final Accounting must be filed with the Court within 120 days after the guardianship ends or the death of the client. After the preliminary final accounting has been filed, the clerk and the Court will review the preliminary final accounting. In the preliminary final accounting, the district public guardian shall “account for all assets, receipts, and disbursements from the date of the last accounting until the date the guardianship terminates and shall detail the amount of the final distribution to close the guardianship. Once the Court has completed its review, if the Court agrees with the accounting, the clerk will issue an order accepting the preliminary final accounting. The district public guardian shall note the date that the order was issued and if “no objections have been filed to the clerk's report on the preliminary final accounting within thirty (30) days from the date the clerk's report is filed, the conservator shall distribute the remaining assets.” After the distribution, the district public guardian shall take an additional step and all “receipts and final cancelled checks evidencing the final distributions shall be filed with the court by the conservator.” The Preliminary Final Accounting should include any court fees (if appropriate) and a plan on how to handle any remaining client funds Id. Thereafter, when “the evidence of the final distribution is filed with the court and on order of the court, the guardianship proceeding shall be closed.” Id. Tenn. Code Ann. 34-3-108(e).
- (b) Tenn. Code Ann. §34-1-113(e) states that after the death of the client, the

fiduciary's duty immediately ends except "for the sole purpose of making reasonable and proper funeral arrangements for the disposition of the remains of the person with a disability, at death".

#### **10. Final Accounting and Order**

- (a) If there is no objection to the clerk's report on the preliminary final accounting within 30 days, the Guardian shall distribute the remaining assets pursuant to the plan outline in the Preliminary Final Report and/or orders from the Court.
- (b) The cancelled checks and receipts are then filed with the court as evidence of the Final Distribution/Accounting.  
After receipt of the cancelled checks and receipts and upon order of the Court closing the guardianship, the guardianship is closed.
- (c) Beginning one hundred and twenty (120) days after the termination of a guardianship or death of a client, the case shall no longer be counted as an active case by TCAD.

#### **11. Making Decision for Clients**

- (a) In the performance of their guardianship responsibilities, public guardians must:
  - i. Take actions as outlined in the court order appointing the public guardian and
  - ii. Make decisions on behalf of the client that allow the maximum level of independent functioning by the client.
- (b) Decisions made by public guardians are to be the least restrictive of the client's personal freedom consistent with the need for supervision and protection, and permit and encourage maximum self-reliance on the part of the client.
- (c) The district public guardian shall seek to purchase pre-needs funeral policies for clients with adequate resources while the clients are living.
- (d) While acting as a conservator or attorney-in-fact, the district public guardian shall participate in the short and long-range plans of care formulated by the institution or facility on behalf of the client and shall make reasonable efforts to engage in ongoing activities and responsibilities to implement the plans.
- (e) All clients must receive an in-person, face to face visit from the district public

guardian, or designated representative or staff at least once per month.

- i. Volunteers may visit clients; however, the district public guardian is required to ensure that the volunteers have adequate training and supervision to carry out these visits.
  - ii. A district public guardian or assistant district public guardian is required to visit all clients at least once a quarter.
  - iii. The plan of care shall be updated at least once a quarter and documented in the file.
- (f) Each individual client shall be given the time required to provide the necessary services to promote the best interest of the client. Depending on the scope and complexity, some cases will require more time and contact.
- (g) Material Change in Circumstance should be filed with the Court upon any significant change in the client's mental or physical status.
- (h) The district public guardian shall maintain regular communication with the client to ascertain his/her satisfaction with the current living situation, the extent of current disability or impairment, and the current needs and desires of the client.
- (i) If the client resides in a care-providing facility, the district public guardian shall maintain regular communication with the providers and caregivers of the client. Communication may include conversations with physicians, psychologists, social workers, nurses, district ombudsmen, and residence operators.
- (j) If case conferences are held at the living site for the client for whom the District Public Guardian has guardianship or Power of Attorney for Health Care, the district public guardian or designee shall attend or provide comment in person, in writing or by telephone.
- (k) The district public guardian shall examine, as necessary, any chart or notes maintained regarding the client.
- (l) The district public guardian must assess at least annually, and document in the case notes, the appropriateness of maintaining the client in the current living situation considering social, psychological, educational, vocational, health, and personal needs of the client. This information must be included in the Annual Status report that is submitted to the court. Tenn. Code Ann. 34-1-111(D)(2)

- (m) If residence is a care-providing facility, the district public guardian shall ensure that the facility is licensed, and that the living situation provides the most appropriate, least restrictive, living arrangement available. If placement in a licensed facility is not available in the district or cannot be found after a thorough search, the district public guardian shall notify the state coordinator. It is the responsibility of the district public guardian to find appropriate placement for the client in a licensed facility. As part of this responsibility, the district public guardian should determine whether there is an active habilitation and rehabilitation plan to maximize the client's potential for independent living and the quality of life offered by the facility. The district public guardian shall assess the client's satisfaction with the current living situation. The living situation shall meet the needs of the client in relation to the availability of support systems.
- (n) The district public guardian shall assess the client's physical appearance and the manner in which the client is reacting to his environment.
- (o) The district public guardian shall assess the state of repair, cleanliness, and safety of a client's living situation. The district public guardian and volunteers shall keep written case notes to record all the personal contact in person, by phone or with other service providers on behalf of the client.
- (p) Before moving the client to a more restrictive environment, the District Public Guardian shall provide written documentation in the client's file specifying the need for such move as well as specify the following:
  - iv. Determine if court authorization is required or if any emergency exists.
  - v. Consult with professionals actively involved with client.
  - vi. Consult with and/or inform family members of intent, if appropriate.
- (q) If empowered by the letter of conservatorship (LOC), the district public guardian is authorized to grant or deny medical treatment after reasonable assessment of all factors involved and conferring with attending physicians.

**10-10: Filing Documents**

The district public guardian shall file:

- (a) initial Inventory
- (b) Property Management Plan
- (c) Annual Status report
- (d) Annual Accounting when no fee is requested
- (e) Preliminary Final Accounting

The retainer attorney may file:

- (a) Annual Accounting when requesting any fee
- (b) Final Accounting

**10-11: Handling Funds**

- (a) No one in the program shall ever co-mingle personal or program funds with the funds of a client.
- (b) No one in the program shall sell or transfer real or personal property or any interest there in to him/herself, a relative, his/her spouse, agency, attorney, or any corporation or trust in which the conservator has a substantial beneficial interest unless the transaction is approved by the court after notice to interested persons and others as directed by the court.
- (c) No one in the program shall accept, as a gift or purchase, any items of any type or value from a client or his/her estate during the provision or after the termination of services from the program.

However, the program may accept financial contributions in the form of donations, including funds from relatives of a client. Donations shall be clearly shown to not pose a conflict of interest, nor shown to create the appearance of a conflict of interest by the public guardianship program staff.

1. A receipt for the gift shall be given to the donor that complies with requirements of the Internal Revenue Service (IRS).
2. Documentation shall be kept in the files for audit purpose.

3. Donations generated by the program shall remain in the local district and shall be used in the program only and shall not replace previously committed resources or funding allocated by TCAD or budgeted by the district.
- (d) A district public guardian MUST not solicit any cases. However, annually providing information and education about the availability of the program to each court in the district is required and is not considered to be solicitation. The program may raise funds to supplement operating costs. Tenn. Code Ann. § 34-7-104(d) (1).

**10-12: Sliding Scale Fee Schedule**

- (a) The district public guardian shall not charge for services provided by the program if the client is indigent or otherwise meets the cost exemption guidelines set out in the sliding scale fee schedule established by TCAD.
- (b) A fee may be set by the court or agreed to by the client, such as when acting as Attorney-in-Fact in Durable Power of Attorney cases. In such cases, the Durable Power of Attorney agreement must be signed by the client.
- (c) Fees generated by the program shall remain in the local district and shall be used in the program only and shall not replace previously committed resources or funding allocated by TCAD or budgeted by the district.
- (d) Unexpended program income from court approved client fees and POA client fees collected during the current fiscal year must be fully utilized for the program. The program shall utilize the most current fee schedule as recommended and provided by TCAD.

**10-13: Representative Payee**

- (a) Representative payee assignments shall be accepted only in conjunction with a guardianship or power of attorney referral.
- (b) The representative payee has the duty to receive and manage benefit

payments on behalf of the beneficiary.

- (c) The district public guardian shall adhere to all guidelines set forth by the SSA or VA governing representative payee duties and responsibilities.

**10-14: Powers of Attorney**

- (a) All Power of Attorney documents must be prepared by a licensed attorney. The licensed attorney must either request a medical statement regarding the person's competency or must ensure that the client is competent to execute the document.
- (b) The Power of Attorney document should specify duties over person and property and the amount of fees the client will be charged in clearly stated terms based on the sliding fee schedule.
- (c) The district public guardian shall not take any action not authorized by the power of attorney.
- (d) Power of Attorney's duties terminate at the death of the client except "for the sole purpose of making reasonable and proper funeral arrangements for the disposition of the remains of the person with a disability, at death". Tenn. Code Ann. §34-1-113(e)
  - i. The district public guardian shall not serve as a personal representative to handle the disposition of the estate of the client.
  - ii. Power of attorney may be terminated in a variety of ways, depending on the type of document and the wording of the document. This includes, but is not limited to, written revocation by the principal, or death of the principal.
  - iii. The following applies to the Power of Attorney for finances:
    - a. A competent individual may revoke such a power of attorney at anytime.
    - b. This revocation should be in writing.
    - c. If a client verbally indicates a desire to revoke, the district public guardian shall make arrangements for revocation to be put in writing.

- d. A specific requirement for accounting is not set out in the statutory provisions.
- e. The initial agreement with the client should specify the type of accounting desired by the client and if the client requests that any other individual or agency receives a copy of the accounting.
- f. An accounting should be provided to the client at least annually.
- g. The district public guardian should develop a tickler system that ensures the timely revision of the accounting.
- h. A family member can request that the court set a bond when a non-family member serves as an attorney-in-fact
- i. Such revocation shall be recorded in the County Register's office in the county where the client resides and/or has property.
- j. If the Power of Attorney is "durable" and the client becomes disabled, he/she may not be competent to revoke the Power of Attorney
- k. In such a situation, the district public guardian shall always obtain a medical statement, preferably an evaluation to determine whether the person is competent to revoke the Power of Attorney.
- l. The district public guardian shall always cease to serve in this capacity if the client has revoked the Durable Power of Attorney for Health Care, either verbally or in writing.

**10-15: Temporary Program Cap**

- (a) Programs may request a temporary program cap when the program believes that it is at the maximum capacity and cannot accept any additional guardian clients.
- (b) The program must complete PG form 10 and submit supporting documentation to TCAD at least thirty (30) days before the requested start of the temporary cap. Maximum caseload will be determined by considering the following:
  1. the number and type of cases served

2. extent of care required
  3. total hours spent on caseload
  4. number of pending cases
- (c) The state coordinator shall review the documentation and make recommendations to the TCAD Executive Director.
- (d) If the request for a cap on a caseload is approved, TCAD shall, within ten (10) business days of the receipt of the request, notify the program.
- (e) If the request for a cap is not approved, TCAD shall notify the appropriate program within ten (10) business days of the receipt of the request.
- (f) If the temporary cap is approved by TCAD, the District Public Guardianship for the Elderly program MUST notify the court in the District of the start and end dates of the cap. The program must use PG Form 10 to document when its courts were notified of the start and end dates of the cap.

**10-16: Termination of Guardianship Cases**

- (a) The client, or any interested person acting on the client's behalf, may petition the court at any time for a termination or modification of a guardianship order. Tenn. Code Ann. § 34-3-108
- (b) The district public guardian shall notify the court if a client's condition changes such that the guardianship should be modified or terminated. Tenn. Code Ann. §34-3-108.
- (c) If the guardianship is terminated, the district public guardian shall complete all the steps required by law. Tenn. Code .Ann. § 34-3-108.
- (d) If a client dies, the guardianship terminates immediately. Other than filing the appropriate accounting with the court, a conservator has no authority to take ANY action following the death of a client other than making appropriate disposition of the remains (a funeral and burial and/or cremation). Tenn. Code. Ann. § 34-3-108(e).
- (e) The district public guardian is required to file a preliminary final accounting with the Court within 120 days after termination of the guardianship or the

client's death. Tenn. Code. Ann. § 34-3-108(e).

- (f) The district public guardian shall immediately notify the Social Security Administration (SSA) and any payer of benefits within 24 hours so that any amounts not due after death can be reclaimed back, if necessary, from the account.
- (g) The District Public Guardian shall not act as a personal representative (administrator or executor) to settle a client's estate.

**10-17: Transfer of Guardianship Cases**

- (a) If a client moves from one AAAD district to another, the district where the client moved from must seek to transfer the case to the new AAAD district program within three (3) months of the client moving from one district to another. If the district public guardian determines a need to transfer guardianship, then the district public guardian shall petition the court for an order to resign as conservator or substitute another agency or as conservator and transfer the fiduciary relationship. Tenn. Code Ann. § 34-1-117.
- (b) If no licensed facility is available, the district public guardian can transfer the client to a AAAD district with appropriate placement and licensed facility.
- (c) The district public guardian shall resign by submitting a written request to the court. If the court approves and the fiduciary submits a final accounting that is approved, the resignation shall be effective on the date set by the court.

**10-18: Resignation of Guardianship by District Public Guardian**

- (a) The AAAD must not submit a resignation unless a substitute guardian has been identified.
- (b) The AAAD shall consult with and receive prior written permission from TCAD to resign a guardianship prior to receiving a substitute guardian.
- (c) The AAAD shall notify the client and close family members in writing of all actions taken under this section, including the reason and the anticipated date of transfer.

- (d) If the AAAD finds it necessary to discharge or transfer a client to an alternative conservator such as a family member, case manager, or significant other, the following procedures shall be implemented to ensure that the discharge or transfer is completed properly.
- (e) When a transfer is made there shall be an analysis of the client's needs as to the transfer and a plan to foster the client's connection with the new conservator.
  - i. A person-centered plan shall be developed with the client's comprehensive needs considered.
  - ii. The person-centered plan shall contain activities such as introducing the client to the new conservator prior to the transfer and visiting with the client after the transfer.

**10-19: Volunteer Program**

Each program shall be responsible for the development and implementation of a volunteer program. The volunteers shall provide each District Public Guardian additional support and assistance in the performance of responsibilities. In accordance with Tenn. Code Ann. § 34-7-104(d) (1), the program may utilize the services of volunteers. Each program shall:

- (a) Recruit volunteers with the goal of each program recruiting and training at least one volunteer per client.
- (b) Provide at least four (4) hours of initial volunteer training to all new volunteers.
- (c) Conduct a background check on each volunteer to ensure no criminal record prior to volunteer placement in accordance with Chapter 15 of the program and Policy Manual. Have signed Volunteer Agreement and Conflict of Interest forms in place before volunteers are assigned to client(s) for all parties to understand the duties and responsibilities of a volunteer. These documents shall be reviewed with volunteers and resigned annually.
- (d) Provide annual training for volunteers. The training shall

be conducted by the district public guardian or designated staff in conjunction with approved training materials by the State Public Guardian Coordinator.

**10-20: Record Keeping, Documentation, and Reporting Requirements**

Each district public guardian is responsible for maintaining accurate, complete records pertaining to each client and shall submit designated monthly reports to TCAD, other appropriate agencies and the court in a timely manner as required by agency procedures or the statutory provisions.

(1) Client Files

- (a) Each district public guardian shall establish and maintain a file for each assigned client.
  - i. All files are considered confidential.
  - ii. The district public guardian shall be the custodian of the records maintained in the district program office.
  - iii. The district public guardian shall maintain a retentive record of all documentation for the current fiscal year, plus five (5) additional years.
- (b) At a minimum, each client file should contain:
  - i. All legal filings;
  - ii. A copy of the last annual accounting;
  - iii. Plan of Care;
  - iv. Visit Log;
  - v. Client face sheet;
  - vi. Recent (taken within the past year) photo of the client;
  - vii. Initial Intake form; and
  - viii. Financial records
- (c) Requests for disclosure of information contained in client files shall be reviewed by the district public guardian.
  - i. The district public guardian shall determine whether the request for release of information should be authorized.

- ii. The district public guardian shall have the power to authorize the release of client information.
- (d) If the client retains the right to authorize the release of his/her own records, written approval shall be obtained from the client and placed in the client's file prior to the release of requested information.
  - i. If the information is confidential and/or privileged, specific client consent is required.
  - ii. If a statutory exception exists, the information shall be released as determined appropriate by the district public guardian.
  - iii. If the client is under conservatorship over property only, written approval by the client is necessary for a release of healthcare information.

#### **10-21: Managing Client Resources**

##### **(1) Guidelines for Establishing Accounts and Payments to the Client**

###### **(a) Checking Accounts**

- (i) Each program may elect to use either an individual check account for each client or one co-mingled trust account with individual accounts contained within it for conservatorship cases. The program shall maintain and utilize the principal's individual account for a client under a POA. The Grantee Agency should maintain a segregation of duties so that no one person is responsible for all aspects of a conservators account. Designated staff, whose responsibilities do not involve receiving or disbursing funds, should reconcile banking statements.
- (ii) Checking and other interest-bearing accounts are to be handled in the following manner:
  - a. The account shall be opened in the name of the grantee agency "for" the client. (e.g. Ocean City Development District for Jane Doe.)
  - b. If a co-mingled checking account is maintained, it shall be opened in the name of the grantee agency, identified as the program account and have individual account per client.

- c. Withdrawal from the client's public guardian account shall require two (2) signatures and shall not include the district public guardian or the client. Only individuals who are bonded through the program or the grantee agency shall provide signatures.
  - d. If a financial or banking institution requires the signature of the district public guardian named in the Letter of Conservatorship on financial documents for guardianship clients, including checks, then the district public guardian may sign financial documents. However, appropriate documentation and records must be maintained.
  - e. Fiscal documents, including but not limited to, copies of checks related bills and invoices must be organized and maintained in the file and provided to the State upon request.
  - f. If agency staff covered under the bond who are involved with check signing or who are on the signature card are no longer affiliated with the public guardianship program, either through termination, resignation or retirement, the agency must request removal of those staff member(s) from the signature card of the financial or banking institution within 48 hours. All financial or banking institution signature cards should be kept current and updated. A copy of the current signature card shall be provided to the state coordinator or state fiscal monitor upon request. TCAD must be notified within 10 business days when the staff members have been removed from the signature cards.
  - g. Accumulation of funds in a non-interest-bearing checking account in excess of 30 to 60 days of anticipated monthly expenses shall be transferred to an interest-bearing account.
  - h. Interest bearing accounts shall be set up to assure accrued interest is credited to the individual client. An exception would be the QIT trust bank account which is usually a non-interest-bearing checking account.
- (b) Investment Accounts and Fiduciary Responsibility
- When a client has liquid financial assets in excess of \$50,000 without prior court approval, the district public guardian shall use the services of an investment or

financial expert with appropriate certification and licensure as a Certified Public Accountant or Certified Financial Planner. The investment fee should be based on earned income as opposed to a flat rate. Should the client come to the program with a financial advisor and fee agreement already in place, the program may honor this arrangement. The program shall notify the state of clients with assets in excess of \$200,000, where the court requires the purchase of an additional bond by means of the month report submitted to the state. The district public guardian must comply with all state and federal laws, regulations, and policies when investing client assets and funds.

- (i) The district public guardian is held to a “Prudent Person Rule” in making investment decisions.
  - (ii) Additionally:
    - a. all accounts or investments should be maintained in FDIC insured institutions in order to insure safety of funds;
    - b. client funds should be placed to obtain the highest rate of return possible.
    - c. client funds should be managed to maintain eligibility for Medicaid and/or Supplemental Security Income, where appropriate.
    - d. Interest bearing accounts shall be set up to assure accrued interest is credited to the individual client.
- (2) Specific Requirements for Use of Funds for Guardianship, Representative Payee, and Power of Attorney Clients
- (a) Guardianships
    - (i) The specific order and property management plan for each guardianship shall provide the guidelines for how property may be invested and income expended.
    - (ii) If circumstances change, the property management plan shall be amended. Tenn. Code Ann. § 34-1-115(b).
    - (iii) The district public guardian is entitled to pay the costs of any required medical exam, the guardian ad litem fee, bond premium, court costs, attorney fees, fees for income tax preparation and court accounting

investment management fees, taxes or governmental charges for which the client is obligated, and such other expenses as the court determines are necessary for the fiduciary Tenn. Code Ann. § 34 (1)–(113)

- (iv) Prior court approval is required before payment of attorney fees, guardian ad litem fee, fees for income tax preparation and court accounting, or investment fees which are paid out of the ward's estate.
- (v) Attorney retainer fees shall be paid out of the program funds for each AAAD program.

(b) Representative Payees

The district public guardian shall adhere to the regulations set out by the Veterans Administration (VA) and the Social Security Administration (SSA) when making extraordinary purchases for the client.

(c) Power of Attorney

- (i) When an agreement is made to provide services to a client through a Power of Attorney, the district public guardian shall not co-mingle funds, but rather, maintain the funds within the principal name and the original account(s).
- (ii) If the client meets the guidelines that allow a fee for service charge, the fee shall be in accordance with the TCAD approved annual sliding fee schedule for the program and included in the plan.
- (iii) The plan shall be signed by both the district public guardian and the client and placed in the client's file.

(d) Payments on behalf of Clients

- (i) The district public guardian shall develop a monthly budget for each client using a computer accounting package approved by TCAD.
- (ii) Monthly expenses shall be deducted from the individual account of each client as disbursements are made.
- (iii) A spending allowance for personal needs may be issued to the client on an individual basis. The personal needs allowance is subject to the maximum allowable amount referenced by the governmental authority such as TennCare or Veterans Administration. All records concerning allowances

made for the personal needs of clients shall be documented, reconciled and maintained.

#### **10-22: Liquidations of Assets**

The district public guardian must comply with all state laws and regulations (in particular Tenn. Code Ann. 34-1-116) regarding the liquidation of client assets. Client assets should only be liquidated in order to pay for client needs. Sale of Property  
Property of the client may only be sold pursuant to relevant statutes, including Tenn. Code Ann. 34-1-116. Property should only be sold or liquidated to support the client and if a court order is required to sell property pursuant to Tenn. Code Ann. 34-1-116, the court order must be properly obtained by the district public guardian.

Tenn. Code Ann. 34-1-116 states:

- (a) Except as provided in subsections (b) and (d), no property of a minor or person with a disability may be sold without prior approval of the court that appointed the fiduciary.
- (b) Unless the fiduciary is holding tangible property for the benefit of a minor or person with a disability pursuant to the terms of a will, trust or other written document, the fiduciary has the authority to sell each item of tangible property with a fair market value of less than one thousand dollars (\$1,000) or a motor vehicle without specific court approval.
- (c) No fiduciary, relative of a fiduciary, employee of a fiduciary, guardian ad litem or attorney for any party shall be a purchaser of property of the minor or person with a disability without court approval.
- (d) This section shall not apply to any fiduciary who is not required to file a property management plan or who has had its investment plans approved as part of its property management plan.
- (e) When the fiduciary seeks court approval for the sale of property, a copy of the pleading requesting approval of the sale shall be sent to the minor or person with

a disability by certified mail with return receipt requested. Although not required, the court may appoint guardian ad litem.

**10-23: Court Cost Request**

The Guardianship statute specifics how court costs are charged.

Tenn. Code Ann. 34-1-114 states as follows:

- (a) The costs of the proceedings, which are the court costs, the guardian ad litem fee and expenses incurred by the guardian ad litem in conducting the required investigations, the required medical examination costs, and the attorney's fee for the petitioner, may, in the court's discretion, be charged against the property of the respondent to the extent the respondent's property exceeds the supplemental security income eligibility limit, or to the petitioner or any other party, or partially to any one or more of them as determined in the court's discretion. In exercising its discretion to charge some or all the costs against the respondent's property, the fact a conservator is appointed or would have been appointed but for an event beyond the petitioner's control is to be given special consideration. The guardian ad litem fee and the attorney's fee for the petitioner shall be established by the court. If a fiduciary is cited for failure to file an inventory or accounting, the costs incurred in citing the fiduciary, in the discretion of the court, may be charged to and collected from the cited fiduciary.

Further, Tenn. Code Ann. 34-7-104(e) sets forth:

- (b) If the disabled person qualifies for SSI benefits, no charge will be made against the disabled person's estate for court costs or fees of any kind. Under no circumstances may court costs be assessed to the public guardianship program.

**10-24: Request to Serve Adults Under Age Sixty**

As an exception, the Executive Director of TCAD may request the district public guardian to serve as conservator for disabled persons who are younger than sixty (60) years of age if the following conditions are met:

- (1) The request is made through a court; and

- (2) The court has found on the record that:
- (i) There are no other less intrusive alternatives available for the disabled person;
  - (ii) The disabled person has no family members or other person, bank, or corporation willing and able to serve as conservator. Tenn. Code Ann. §34-7-104(1)(n).

In the event that an attorney, court or state agency seeks to appoint the district public guardian to serve as a conservator for disabled persons who are younger than sixty (60) years of age, the requestor shall submit a Tennessee Public Guardianship for the Elderly Application and support documentation by mail or email to the appropriate program. Support documentation may include, but not limited to, medical records, affidavits, petitions, reports, or orders. The program shall notify the TCAD Executive Director and State Public Guardian Coordinator within five (5) business days of receipt of the initial under-age request along with the program's capacity and willingness or unwillingness to serve. The TCAD Executive Director and State Public Guardian Coordinator shall review the application and support documentation. The requestor shall file the appropriate documentation or pleading in the appropriate judicial venue to establish the request and allow the court to determine the necessary statutory requirements on record. The TCAD Executive Director shall issue a certification letter of approval or denial to the program and relevant parties within five (5) business days of receipt of the request made through the court.

## Appendix A:

### DEFINITIONS

- (1) Adversary Counsel - a private lawyer hired by a respondent to represent the respondent's interest in any action under Tennessee Code Annotated, Section 34-1-102 et seq..
- (2) Attorney ad litem - an attorney appointed by the court to act as counsel for the respondent.
- (3) Attorney in fact - a person designated in a written document by another (the principal) to act on the principal's behalf in the specific areas set out in the written document (the power of attorney) at the times specified by the power of attorney.
- (4) Beneficiary - a recipient of government benefits.
- (5) Client - any individual receiving services from the Public Guardianship for the Elderly Program.
- (6) Conservator or Co-conservator - a person or persons, including an agency or a corporate entity, appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a disabled person. District Conservator is utilized in these policies to refer to the person employed to serve as conservator under the Public Guardianship for the Elderly Program and would include a designee such as persons acting as assistants or back-ups.
- (7) Durable Power of Attorney - a power of attorney by which a principal designates another person or agency as his attorney-in-fact in writing, and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. If a power of attorney does not

contain this language, and the principal becomes incapacitated, the power of attorney will be void. The statutory provisions that govern the power of attorney for financial matters are set out in the Uniform Durable Power of Attorney Act, Tennessee Code Annotated, Section 34-6-101, et seq.

- (8) Disabled person - any person 18 years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of mental illness, physical illness or injury, advanced age, developmental disability or other mental or physical incapacity.
- (9) Durable Power of Attorney for Health Care - a durable power of attorney to the extent that it authorizes an attorney-in-fact to make health care decisions for the principal. This power of attorney should be utilized to appoint an agent to make health care decisions and the form of such a power of attorney must comply with the provisions of Tennessee Code Annotated, Section 34-6-203 to be valid.
- (10) Fiduciary - a term defined in various ways in the Tennessee Code Annotated, and may refer to a conservator, or in some cases, an attorney in fact. There are statutory obligations imposed upon specific fiduciaries. There are also statutory obligations and duties imposed on all fiduciaries who, by virtue of their position, are in a trust relationship to the person for whom they serve, and they must exercise a standard of care established under the "Prudent Person Rule" [T.C.A. 35-14-103 et seq]. Traditionally, this term was applied to a person or agency that managed property or money for another. Any fiduciary that has investment responsibilities must ensure that the proper standard of care is exercised in the management and investment of this money.
- (11) Grantee Agency - the contracting agency administering the Public Guardianship for the Elderly Program.
- (12) Guardian ad litem - a person or persons who is appointed by the court to represent the respondent and to perform the duties set forth in Tennessee Code Annotated, Section 34-1-107(d). The Court must appoint a lawyer licensed to practice in the state of Tennessee or, if there are insufficient

lawyers within the court's jurisdiction for the appointment of a lawyer as guardian ad litem, the court may appoint a non-lawyer.

- (13) Representative Payee - an individual or organization named by a governmental agency to receive government benefits on behalf of, and for the benefit of, the beneficiary entitled to such benefits.
- (14) Respondent - a person who is alleged to be a disabled person for whom a fiduciary is being sought.
- (15) State Agency - the Tennessee Commission on Aging and Disability.

## Appendix B:

### Abbreviations:

1. AAAD - Area Agency on Aging & Disability (singular)
2. TCAD - Tennessee Commission on Aging & Disability
3. PSA - Planning Services Areas
4. NGA - National Guardianship Association
5. CAT - Conservatorship Association of Tennessee
6. SSA - Social Security Administration
7. VA - Veterans Administration
8. POA - Power of Attorney
9. DPOA - Durable Power of Attorney
10. TCA - Tennessee Code Annotated
11. DPG - District Public Guardian
12. LOC - Letter of Conservatorship
13. T.C.A- Tennessee Code Annotated