

# Guardianship and Conservatorship

This module offers a basic overview on working with adults who have or may need a guardian and/or conservator to make personal and/or financial decisions on their behalf, and includes West Virginia laws pertaining to guardianship and conservatorship.<sup>1</sup>

## Key Points

- *If an adult in West Virginia lacks the ability to make personal and/or financial decisions, it may be determined by the court that they are a “protected person” and need a guardian and/or conservator to be appointed to make these decisions on their behalf. A guardian is a person appointed by the circuit court who is responsible for the personal affairs of a protected person. A conservator is a person appointed by the circuit court who is responsible for managing the estate and financial affairs of a protected person. The terms and conditions of the court order of appointment will indicate the scope and limitations of the guardianship/conservatorship.*
- *In order for a guardian or conservator to be appointed, a petition must be filed in circuit court in the county where the potentially protected person resides. Any interested person may file this petition. A hearing is scheduled within 60 days of the petition being filed.*
- *Based upon information presented during the hearing, the court determines if the individual is to be considered a protected person; the person’s limitations; development of the person's maximum self-reliance and independence; whether a guardian and/or conservator should be appointed; the type of guardian and/or conservator and specific areas of protection, management and assistance to be granted; the suitability of the proposed guardian and/or conservator; and the length and other terms and conditions of the order. Prior to appointment, the guardian/conservator must complete mandatory training. The court monitors the appointment through periodic reports by the guardian/conservator. This process is intended to pursue the least intrusive type of appointment necessary to meet the person’s needs.*
- *Providers should view guardians/conservators as partners in assisting clients to meet their self-identified needs (according to the terms and conditions of their appointment), unless there is reason to think otherwise.*
- *If providers suspect abuse or neglect of a protected person by their guardian/conservator, they are required to report their suspicions to their local Department of Health and Human Resources (DHHR) or the statewide hotline at 800-352-6513. If they suspect a crime has been committed against a protected person, they should call local law enforcement. If they think a protected person is in imminent danger, they should call 911. If they suspect a guardian/conservator is not acting in a protected person’s best interest, they can contact the circuit court that appointed the guardian/conservator or a private attorney for information on options. In cases in which DHHR is the appointed guardian, service providers can also contact their local DHHR.*
- *If a client has a guardian/conservator, service providers must clarify the terms and conditions of the appointment. Service providers need this information before making decisions to release client information to a guardian/conservator. They also must consider*

whether they need the permission of the guardian/conservator to release client information to other providers or to provide specific services to the client.

## C7. Guardianship and Conservatorship

### Purpose

*You received a call last week regarding Beth, a vibrant 26-year-old with a cognitive disability. You arranged to meet with her today. When you go out into your reception area, Beth is there with an older gentleman whom she introduces as her guardian. You want to speak to Beth alone. Legally, can you? What do you do?<sup>2</sup>*

The above scenario is one illustration of why it is important for service providers to have general knowledge about guardianship and conservatorship, as they may work with adults with disabilities who have, or may be in need of, a guardian and/or conservator. There are times when adults, due to “mental impairments,”<sup>3</sup> are no longer able to make their own decisions; in some situations, a guardian and/or conservator may be appointed to make decisions on their behalf. The West Virginia Guardianship and Conservatorship Act,<sup>4</sup> originally enacted in 1994, outlines the circumstances under which a guardian and/or conservator may be appropriate, the process for a guardian and/or conservator to be appointed, and the duties and responsibilities of an appointee. The role of the guardian is distinguished from the role of a conservator by the nature of the decisions each is authorized to make. Guardians are authorized to make certain *personal* decisions, while conservators are authorized to make *financial* decisions.

Service providers should be able to connect clients who have questions or needs related to guardianship and conservatorship to the appropriate resources. When clients already have a guardian/conservator, providers need to know how the involvement of a guardian/conservator can potentially impact service delivery and ways to work collaboratively with the guardian/conservator and the client to address the client’s self-identified needs. For clients who are sexual assault victims, providers must realize the inherent power that the guardian/conservator has over the dependent person and that this power could be used to manipulate and take advantage of that person. Critical safety issues to consider include the scope of confidentiality of client information and what to do if there are suspicions that a guardian/conservator is mistreating a client or not acting in a client’s best interest.<sup>5</sup>

### Objectives

Those who complete this module will be able to:

- Understand the differences between guardianship and conservatorship;
- Understand the process and criteria for appointing guardians and conservators, as well as determining their respective duties;
- Describe how to collaborate with clients with disabilities and their guardians and conservators to meet clients’ self-identified needs; and
- Discuss potential safety concerns for persons with disabilities who have guardians and conservators.

## CORE KNOWLEDGE

### What definitions are important to know related to guardianship and conservatorship?<sup>6</sup>

**PROTECTED PERSON:** An adult individual, 18 years of age or older, who has been found by the circuit court, because of mental impairment, to be unable to receive and evaluate information effectively, or to respond to people, events and environments to such an extent that the individual lacks the capacity to: (a) meet the essential requirements for his or her health, care, safety, habilitation<sup>7</sup> or therapeutic needs without the assistance or protection of a guardian; OR (b) manage property or financial affairs, or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. This assessment is called a competency evaluation and is performed by the circuit court judge.

**GUARDIAN:** A person appointed by the circuit court who is responsible for the *personal affairs* of a protected person. Responsibilities of a guardian may include making personal decisions for the protected person such as deciding where the person will live, how meals and daily care will be provided, and how healthcare will be provided.

Guardianship may be full or limited. A limited guardian has only those responsibilities for the personal affairs of a protected person as specified in the order of appointment. A limited guardianship generally occurs when the court determines that a protected person needs a guardian for a specific purpose, but is capable of addressing some of the essential requirements for her or his health, care or safety. The court can also appoint a temporary guardian if it finds that an immediate need exists—the temporary guardian has only those powers and duties specifically set forth in the order of appointment and only for a limited time.<sup>8</sup>

**CONSERVATOR:** A person appointed by the circuit court to be responsible for managing the *estate and financial affairs* of a protected person. Conservator responsibilities may include controlling the protected person's assets, paying bills and managing property.<sup>9</sup> Like guardianship, conservatorship may be full or limited, as well as temporary.<sup>10</sup>

**FYI—***The West Virginia Social Services Manual, Guardianship Services* indicates that incompetence is a legal determination that individuals lack the ability to understand the nature and effects of their acts and, as a result, are unable to manage their business affairs or are unable to care for their physical well-being, thereby resulting in substantial risk of harm.<sup>11</sup>

### What are the responsibilities of a guardian/conservator?

In order for a guardian/conservator to be appointed, a petition requesting this type of appointment must be filed with the circuit court (see pages C7.4–C7.5). If, during the guardianship/conservatorship hearing, the court determines that the adult meets the definition of a “protected person” under the Guardianship and Conservatorship Act, a guardian/conservator may be appointed to assist the protected person with her/his decisions. The court determines the specific terms and conditions of the appointment—it is the responsibility of the guardian or conservator to honor those terms and conditions. As noted earlier, the authority of the guardian/conservator may extend to all personal/financial decisions affecting the protected person or may be limited in scope or duration. *The court typically pursues the least intrusive type of appointment necessary to meet the individual's needs. The appointment should promote the protected person's self-reliance and independence.*<sup>12</sup>

To determine the responsibilities of a guardian/conservator for a particular individual, it is necessary to review the order of appointment for that individual. Note, however, that in addition to the specific terms and conditions of their appointment, the state code outlines general mandated requirements and responsibilities both for guardians and conservators. For details, refer to *WVC§44A-3-1 through 3-10*.

**FYI—A guardian/conservator is entitled to reasonable compensation** as allowed by the court from the protected person’s estate. However, the frequency and amount of compensation must be approved by the court.

### **Who is qualified to serve as a guardian or conservator?**

Any adult may be appointed by the court to serve as a guardian and/or conservator, provided that the court determines that the individual is capable of providing a suitable program of guardianship and/or conservatorship for the protected person. Frequently the same person is appointed as guardian and conservator. However, the court can appoint different people to fill these positions if it is determined that it would be in the protected person’s best interests.<sup>13</sup> Also, the court may, after determining it to be in the best interest of the protected person, appoint co-guardians, co-conservators or both.<sup>14</sup>

In the event that a family member, friend or other qualified person is not available to be appointed by the court, the law specifies other agencies and entities the court can designate to assume these responsibilities. Examples of these agencies include the West Virginia Department of Health and Human Resources (DHHR), Adult Protective Services (APS), and certain state licensed non-profit entities. DHHR may be appointed to serve as a guardian in instances where no one else is equally or better qualified, but this agency is not allowed by law to be a conservator. When there is no one else equally or better qualified to serve as conservator, the sheriff of the county where the petition was filed may be appointed.<sup>15</sup>

NOTE: Persons employed by or affiliated with any public agency, entity or facility (including nursing home employees) that is providing substantial services or financial assistance to a protected person are not eligible to serve as a guardian or conservator to that person.

**FYI—Persons being considered by a court for appointment as a guardian and/or conservator** are required to provide information regarding any crime other than traffic offenses for which they were convicted. The court or mental hygiene commissioner also may order a background check to be conducted by the state police or county sheriff. The court will then consider this information in determining a person's fitness to be appointed as a guardian/conservator.

There are no specific educational requirements in order to be considered for appointment as a guardian/conservator. It is only necessary that persons being considered demonstrate that they are capable of performing the duties of guardianship or conservatorship.

### **What is the process for determining the need for and extent of guardianship and/or conservatorship?**

This section discusses filing a petition to appoint a guardian/conservator, the initial hearing, mandatory training for guardians/conservators and the order of appointment.

**FILING A PETITION:** In general, the process begins when someone makes an official request (files a petition) to the circuit court to appoint a guardian/conservator for a potentially protected

person. There is a \$110 filing fee (some jurisdictions waive this cost when DHHR is the petitioner).<sup>16</sup> The petition must be filed with the circuit court clerk in the county where the potentially protected person resides, unless the person has been admitted to a health care or correctional facility in another county. In this situation, the petition should be filed in the county where the facility is located.

Any interested person may file a petition to request the appointment of a guardian/conservator. Individuals specifically identified in the state code as persons who may file include: the potentially protected person; a person who is responsible for that individual's care/custody; the facility providing care to the individual; a person the potentially protected individual has nominated to serve as guardian/conservator; DHHR; or any other interested person. When it is believed a guardian/conservator is needed and no one is available or willing to file the petition, DHHR may file.

**A petition to appoint a guardian/conservator must contain the following information:**

- Petitioner's name, address and relationship to the potentially protected person;
- Potentially protected person's name, address, gender, race, height and eye color;
- Names and addresses of the potentially protected person's nearest known living relatives;
- Name and address of any individual or facility who is responsible for the potentially protected person's care or custody and a detailed list of things they do for the person's benefit;
- Name and address of the potentially protected person's living will or medical power of attorney representative or appointed healthcare surrogate, and a detailed list of things they do for the person's benefit (copies of these documents should be attached to the petition if available);
- Name, address and phone number of the petitioner's attorney;
- If the potentially protected person will be able to attend the hearing and, if not, why;
- Extent of guardianship/conservatorship requested, reasons why and specific areas of protection or assistance requested;
- Name and address of the guardian/conservator the petitioner proposes;
- If the proposed guardian/conservator is an individual, the petition should include the proposed guardian's/conservator's address, age, occupation and relationship to the potentially protected person (it should also include the same information for the individual the potentially protected person has nominated as guardian/conservator, if different from the one being proposed by the petitioner);
- Name and address of any current guardian/conservator already acting on the potentially protected person's behalf;
- The names and criminal histories of any individual proposed, nominated or acting as a guardian/conservator, as listed on this form, who has ever been convicted of a criminal offense other than a traffic offense;

- An evaluation report by a licensed physician or psychologist documenting the nature, type and extent of the protected person’s incapacity (its primary purpose is to provide evidence as to whether an individual meets the definition of protected person under the law and the scope of protection and assistance needed<sup>17</sup>); and
- A statement of financial resources, for conservatorship only (listing the protected person’s social security number, approximate value of real and personal property and the anticipated annual income and other receipts<sup>18</sup>).

**FYI**—See <http://www.state.wv.us/wvsca/rules/conservator/gcindex.htm> for **links to forms used in guardian/conservator cases** in state circuit courts. Forms are also available at local circuit court clerks’ offices.

**INITIAL HEARING:** A hearing is scheduled by the circuit court within 60 days of the petition being filed. The potentially protected person (and caregiver as appropriate) will receive a notice of the date, time and place of the hearing, a copy of the petition and a copy of the doctor’s evaluation not less than 14 days before the hearing.<sup>19</sup> The court will appoint legal counsel for the person, taking into consideration the person’s preferences if they are known.<sup>20</sup>

It is the responsibility of the court to determine, based on the information presented during the hearing:

- If the individual is to be considered a protected person under the law;
- The limitations of the protected person;
- The development of the person's maximum self-reliance and independence and the availability of less restrictive alternatives, including the extent to which it is necessary to protect the person from neglect, exploitation or abuse;
- Whether a guardian and/or conservator should be appointed;
- The type of guardian and/or conservator and specific areas of protection, management and assistance to be granted;
- The suitability of the proposed guardian and/or conservator; and
- The length and other terms and conditions of the order.

**FYI**—Note that a court finding that persons only exercised poor judgment in caring for themselves/their property is not enough to qualify them as protected persons.<sup>21</sup>

It is the appointed legal counsel’s role to determine whether a guardian and/or conservator is needed, tailor the guardian’s/conservator’s role to the person’s specific needs, ensure that the individual with the greatest interest in the potentially protected person is appointed guardian/conservator and ensure that proper living arrangements and placement are considered. Legal counsel should also ensure that any bond required by the court is adequate—posting of bonds is at the court’s discretion and *usually not required* of a guardian,<sup>22</sup> but typically *is required* of a conservator.<sup>23</sup> The bond provides a way for the court to safeguard the protected person’s assets—the court’s order of appointment will indicate the amount and type of bond, if applicable.<sup>24</sup>

The appointed legal counsel should interview the potentially protected person to determine the person's needs and wishes, conduct an investigation to determine if a guardian/conservator is needed, and make recommendations as to who would be the best guardian/conservator for the person and what would be suitable living arrangements/placement.<sup>25</sup>

**MANDATORY TRAINING:** Any guardian/conservator named at the conclusion of the petition hearing is typically required to complete mandated training (coordinated by the WV Court of Appeals) within 30 days of the court's determination. Upon completion, the court can issue the order of appointment.<sup>26</sup>

**ORDER OF APPOINTMENT:** Once the court has determined that a guardian/conservator is necessary and a guardian/conservator has been appointed, the appointed individual is charged with the responsibility of acting in accordance with the specific terms and conditions established by the court.

### **How can service providers collaborate with clients with disabilities and their guardians/conservators to meet the clients' self-identified needs?**

Some examples of simple steps that service providers can take:

- To the extent possible, speak directly with clients, rather than to or through their guardian/conservator. Encourage them to do the same with you.
- Endeavor to find out what clients need (as opposed to what their guardians/conservators want) and base services provided on those needs to the extent possible. If appropriate (e.g., if clients have the capacity/comfort level to communicate with you), speak separately with them and their guardians/conservators to further assess needs, as well as with both clients and their guardians/conservators present.
- Quickly find out what accommodations are necessary to maximize the capacity of clients to access services and communicate with you and others. Provide or coordinate accommodations to the extent possible. (See *Disabilities 101. Accommodating Persons with Disabilities*.)
- View guardians/conservators as partners in assisting clients, unless there is reason to think otherwise. Give them time to ask questions, share information and provide input.
- Find out the terms and conditions of the guardianship/conservatorship and discuss with clients the impact of those terms on service provision.
- Ask clients how their disabilities may impact service delivery and brainstorm ways to overcome obstacles to receiving services. Ask their guardians/conservators for input on this issue.
- Let clients know you are available if they would like to further discuss their situation, your agency's services or other services in the community. Extend the same invitation to their guardians/conservators.

**Applying the Knowledge.** Let's apply these strategies to answer the questions in the scenario at the beginning of this module—

*Beth, a 26-year-old woman with a cognitive disability, and her guardian are waiting in your*

*agency's reception area for Beth's intake meeting with you. Can you legally talk with Beth alone, and if so, what can you do to make this happen?*

Note that your answers as the service provider may be influenced by the specifics of the client's situation. In general, guardians usually don't seek to restrict conversations that protected persons have with others, unless it is a condition of their appointment, such as restricted interaction with an abusive family member. However, keep in mind that in cases where the guardians themselves are abusive, they are unlikely to want the protected persons to speak alone to providers because they could be incriminated. Service providers should make it a standard practice to observe verbal/nonverbal interactions between clients and their guardian, as these observations may identify potentially abusive behaviors.

In Beth's case, she and/or her guardian may immediately provide some clues regarding the level of involvement the guardian usually has in these types of appointments. For example, when the receptionist calls Beth to go to your office, just Beth comes in. She explains to you that her guardian drove her to the office and will wait in the reception area during the appointment unless he is needed. As a courtesy, you or Beth could let the guardian know about how long the intake will be and let him know if he will be needed. Another possibility is that Beth and her guardian both go into your office when called and Beth explains that her guardian usually sits in on appointments to provide emotional support and/or help her communicate with/understand the service provider. (If the guardian is the one doing the explaining, also assess if Beth really wants/needs this support and assistance.) In this case, you can describe the intake process to both and the fact that you typically speak in private with the client during some or all of this process. You can ask Beth if she has any questions, if she is comfortable with the process as explained and if there are any accommodations she needs during the intake meeting (e.g., she may indicate she wants/needs the guardian present throughout). You can ask the guardian if he has any questions and find out more if needed about the conditions of the guardianship. It is possible he may express concerns about a private meeting (e.g., because he thinks Beth won't understand the questions or be able to answer them appropriately). The three of you can discuss how to address these concerns in a way that best honors Beth's wishes and accommodates her needs.

(See the other *Disability 101* modules for ways to enhance your interactions with victims with disabilities.)

### **What are potential safety concerns for persons with disabilities who have guardians/conservators?**

**The vast majority of guardians and conservators act in the best interests of the persons they are appointed to care for and protect** (as per the terms and conditions of their court appointments) and are not abusive to them. However, persons with disabilities are particularly vulnerable to being manipulated and taken advantage of by less conscientious guardians/conservators because of the power guardians/conservators may have over them and their personal affairs. (See *Sexual Violence 101. Sexual Victimization of Persons with Disabilities: Prevalence and Risk Factors* and *Sexual Violence 101. Indicators of Sexual Violence*.)

**Service providers should take action if they suspect persons with disabilities are being abused or neglected by their guardians/conservators.** If providers suspect abuse or

neglect of a protected person by a guardian/conservator, they are required to report their suspicions to their local DHHR (go to <http://www.wvdhhr.org/> to find contact information) or the statewide DHHR 24-hour hotline at 800-352-6513. If they suspect a crime has been committed against a protected person by a guardian/conservator (e.g., physical/sexual assault or theft), they should contact local law enforcement. If they think a protected person is in imminent danger, they should call 911 for immediate assistance. (See *Sexual Violence 101. Mandatory Reporting* and *Sexual Violence 101. Crisis Intervention*.)

**Service providers may suspect a guardian/conservator is not acting in a protected person's best interest.** Guardians/conservators are subject to the jurisdiction of the circuit court that appointed them. They can be removed for not acting in the protected person's best interests or not following court terms and conditions. (One way the courts monitor compliance with terms and conditions is by requiring periodic reports from guardians/conservators.) Guardianships and conservatorships can be modified for a number of reasons, including a change in the protected person's medical status or financial circumstances. Guardians and conservators can also be removed or limited in their duties if they become incapacitated in some way themselves. Legal action to remove a guardian and conservator is a serious step that may be appropriate in some cases.<sup>27</sup> For information on what clients can do in these instances, contact the circuit court that appointed the guardian/conservator (for contact information see <http://www.state.wv.us/wvsca/circuits/map.htm>) or an attorney (for referrals, contact Legal Aid of West Virginia at [www.lawv.net](http://www.lawv.net) or 866-255-4370). In cases in which DHHR is appointed the guardian, service providers can also contact their local DHHR for more information on options for protected persons.

**Service providers may be unclear about whether client information is confidential when a client is a protected person and has a guardian/conservator.** The extent of confidentiality of client information will depend on the terms and conditions of the guardianship/conservatorship. In the case of full guardianship, the guardian is most likely able to access client information. If the guardianship is limited, and many are as courts strive to place protected persons in the least restrictive environment possible, client information may be protected to some extent from the guardian. Those who are conservators only should not have access to client information unless it involves the client's finances.

To clarify whether client information is confidential, providers must find out if clients with disabilities have guardians/conservators and the terms and conditions of their appointments. They can ask clients during their initial contact if they have a guardian/conservator (in many cases, a client will share this information freely or it may be evident because a guardian/conservator or someone who knows that there is a guardian/conservator may call/come in for services with the client). If they answer affirmatively, providers should take the next step to ask clients or those accompanying them about the terms and conditions of the guardianship/conservatorship. In addition to asking about terms and conditions, providers should request to see a certified copy of the court order appointing the guardian/conservator. Alternatively, they can seek to access the court order through the circuit court in which the guardianship/conservatorship was petitioned. Although documents related to a guardianship/conservatorship proceeding are not considered public records, the protected person and her/his attorney may inspect or copy the file and others may petition the court for permission to inspect/copy the file. Upon good cause shown, the court/mental hygiene commissioner may grant another party this permission.

Providers need information about the terms and conditions of a guardianship/conservatorship before making a decision to release that client's information to a guardian/conservator. They also must consider whether they need the permission of the guardian/conservator to release information to other providers or to provide specific services to the client (e.g., non-acute medical care, intake services, mental health counseling and transportation). If providers have questions about confidentiality in these cases, they or their agencies can seek legal advice. (See *Sexual Violence 101. Confidentiality.*)

### **Questions to consider:**

1. What has your overall experience been in interacting with clients with disabilities who have a guardian/conservator, and more specifically, with sexual assault victims with disabilities who have a guardian/conservator?
2. Does your agency have any policies/procedures that guide your interactions with clients and their guardian/conservator?
3. What are the challenges of working with clients who have a guardian/conservator? Is meeting a client's self-identified needs problematic? How does the involvement of the guardian/conservator impact service delivery?

These questions can be considered by individual readers and/or discussed among agency employees and with representatives from partnering agencies.

### **Test Your Knowledge**

*Refer to the pages in this module as indicated to find the answer to each question.*

1. According to the WV Guardianship and Conservatorship Act, what is a protected person? What is a guardian? What is a conservator? *See page C7.3.*
2. What are the responsibilities of a guardian and a conservator? *See page C7.3.*
3. Are guardians/conservators compensated for carrying out their appointed duties? *See page C7.4.*
4. Who is qualified to serve as a guardian or conservator? *See page C7.4.*
5. In what situations is DHHR appointed to serve as guardian and the county sheriff appointed to serve as conservator for a protected person? *See page C7.4.*
6. Who may file a petition to request the appointment of a guardian and/or conservator? Where is the petition filed? Is there a fee for filing the petition? *See page C7.5.*
7. What information does a petitioner need to provide about the potentially protected person? *See pages C7.5–C7.6.*
8. What does the court seek to determine during the initial hearing? *See page C7.6.*
9. What are some examples of how service providers can collaborate with clients with disabilities and their guardians/conservators to meet the clients' self-identified needs? *See page C7.7.*

10. What should providers do if they suspect abuse or neglect of a protected person by their guardian/conservator? If they suspect a crime has been committed against a protected person by their guardian/conservator? If they think a protected person is in imminent danger? If they suspect a guardian/conservator is not acting in a protected person's best interest? See pages C7.8–C7.9.
11. How do service providers determine if a client's information is confidential when a client is a protected person and has a guardian/conservator? See page C7.9.

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Funding was provided by Grant No. 2006-FW-AX-K001 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this module are those of the authors and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women.

<sup>1</sup>Partnering agencies refer to the persons they serve as “clients,” “consumers” and “victims.” For convenience, “victims” and “clients” are primarily used in this module.

<sup>2</sup>Although males and females are both victimized by sexual violence, most reported and unreported cases are females (see the endnotes in the *Toolkit User's Guide* for a full citation). Therefore, in this module, victims are often referred to as female.

<sup>3</sup>Note that some legal terms used in the state law on guardianship and conservatorship—“mental impairment” for example (*West Virginia Code, Chapter 44A. 1-4* or *WVC§44A-1-4*)—may seem outdated. (See *Disabilities 101. Person First Language*.) We use this term here solely to reflect the definition of a potential “protected person” under the law.

<sup>4</sup>See *West Virginia Code, Chapter 44A (WVC§44A), West Virginia Guardianship and Conservatorship Act*, <http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=44A&art=1>. This and other online documents referenced in this module were available at the links provided at the time the module was written. It is suggested you check the sites for any updates or changes. If you experience difficulty accessing the documents via the links, another option for locating documents is doing a web search using titles. WV Department of Health and Human Resources, Social services manual, guardianship services, was also referred to during this module's development.

<sup>5</sup>Note that the terms “sexual violence” and “sexual assault” are generally used in this module to encompass sexual assault, sexual abuse and other forms of sexual violence.

<sup>6</sup>The definitions are drawn from *WVC§44A-1-4*.

<sup>7</sup>“Habilitation needs” in this context means the person’s needs related to being able to function in society.

<sup>8</sup>West Virginia guardian and conservator handbook, A guide for court-appointed guardians and conservators, 2.

<sup>9</sup>*WVC§44A-1-8(k)*: A conservator shall not be appointed when the protected person's total assets are worth less than two thousand dollars or the protected person’s income is: (1) from the Social Security Administration and a representative payee has been appointed to act in the best interest of the individual; (2) from Medicaid and the only income distributed to the individual is the personal account allotment; or (3) less than 50 dollars per month or 600 dollars per year. In these instances, the guardian, representative payee or health care facility, if there is no other person or entity, shall manage the personal care account or assets.

<sup>10</sup>*West Virginia guardian and conservator handbook, A guide for court-appointed guardians and conservators, 2.*

<sup>11</sup>WV Department of Health and Human Resources, 1.

<sup>12</sup>WV Department of Health and Human Resources, 1.

<sup>13</sup>Last two lines in paragraph, Appalachian Legal Aid, *Guardianship/conservatorship: What do I need to know* (Charleston, WV), <http://www.wvlegalservices.org/guardcon.pdf>.

<sup>14</sup>*WVC§44A-1-8(b)*.

<sup>15</sup>Appalachian Legal Aid.

<sup>16</sup>*West Virginia guardian and conservator handbook, 4.* The fee was \$110 as of the 2010 writing of this module. If a guardian/conservator is appointed by the court, filing fees may be reimbursed to the individual who filed from the protected person’s estate, if funds are available.

<sup>17</sup>*West Virginia guardian and conservator handbook, 20.* The court, for good cause shown, may grant leave to file the petition without an evaluation report. However, it must order that the appropriate assessment and a report be prepared and filed.

<sup>18</sup>*West Virginia guardian and conservator handbook, 20.*

<sup>19</sup>*Guardianship/conservatorship: What do I need to know.*

<sup>20</sup>Paragraph from *Guardianship/conservatorship: What do I need to know.*

<sup>21</sup>*Guardianship/conservatorship: What do I need to know.*

<sup>22</sup>*WVC§44A-1-9.*

<sup>23</sup>*Unless the conservator is a bank or trust company. West Virginia guardian and conservator handbook, 10.*

<sup>24</sup>*West Virginia guardian and conservator handbook, 10–11,* as drawn from *WVC§44A-1-9*. In making the determination about the amount of a bond, the court considers: the value of the estate, annual income and other receipts that are within the conservator’s control; the extent to which the estate has been deposited under an arrangement that requires a court order for removal; whether an order has been entered that waives the requirement that accountings be filed or that the accountings be presented less frequently than once a year; the extent to which income and receipts are paid directly to a facility responsible for the protected person’s care and protection; the extent to which the income and receipts are from state or federal programs that require periodic accountings; whether a guardian has been appointed, and if so, whether the guardian has presented reports as required, and whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

<sup>25</sup>Above two paragraphs from *Guardianship/conservatorship: What do I need to know.*

<sup>26</sup>*WVC§44A-1-10* and *West Virginia guardian and conservator handbook, 6* and 10.

<sup>27</sup>Paragraph from Washington State Department of Social and Health Services, *Guardianship basics—Frequently asked questions*, <http://www.aasa.dshs.wa.gov/pubinfo/legal/guardianship.htm>.