

# 2020 Spring Newsletter



Washington Association of  
Professional Guardians



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## Presidents Note



Wow, 2020 has certainly been unprecedented. Who would of thought that ringing in the New Year would be one of the most challenging years that our profession has or will experience. I hope that all of us take time to honor ourselves, our profession and the work that we do on behalf of our clients. It is in a time of crisis that the importance of a CPG should be realized and appreciated.

On April 17, 2020, the WAPG Board approved a change in the By-Laws that simplifies the membership criteria. In the past only CPG's could be full members with other related professionals becoming associate members. The By-Law change now allows for CPG's and any related professional to become a full member. There are now two membership statuses which are Full Members or a Student Members. It has been a challenge to find individuals willing to serve as a WAPG officers and the WAPG Board hopes that this will allow related professionals to serve on the WAPG Board and as WAPG officers. If you are interested in serving on the WAPG Board or to become a WAPG Officer, please let me know.

The National Guardianship Association (NGA) has issued a statement on COVID-19 which is included for your review and comments.

Western Washington State Hospital is requesting assistance in locating CPG's for their clients who are set to be discharged back into the community. As CPG's we realize the importance of having qualified CPG's for difficult client populations. If you are interested in serving please contact Linda Clements at [CLEMELS@dshs.wa.gov](mailto:CLEMELS@dshs.wa.gov).

WAPG through its board continues to advocate for Washington CPG's. In this Newsletter you will find correspondence provided to the CPG Board and AOC staff regarding COVID-19 response, implementation of Article 7, Section 7 and revision of GR 23. WAPG continues to reach out to the CPG Board requesting collaboration in revising GR23.

Please consider renewing or becoming a member of WAPG. It is only through our membership numbers and dues is WAPG able to advocate for our profession and clients. This year has challenges that will require WAPG to advocate with the State Legislature, CPG Board, Washington State Supreme Court and for the clients we serve.

The WAPG Spring/Summer conference will be a virtual conference, more information to come soon. I would like to thank the committee for proposing an awesome program that will include training on the Washington State Uniform Guardian Act (WAUGA) which becomes effective on January 1, 2022. Please watch your emails for more information.

I have decided to rename Covid-19 to Gain 19 because it appears that I will be gaining weight through the quarantine. Please be safe and thank you for serving your clients during this unprecedented time.

Thank you

Gary Beagle, NMG, CPG, CEO  
President and CEO  
Intrustment Northwest, Inc.

## April 15th CPG Board Letter

Dear Dr. Sanders and Mr. Smerken:

Thank you both very much for your time individually on the phone after the CPG Board meeting Monday afternoon. As I mentioned, it appears only the folks on the public line could hear me and not the Board as I expressed my wish to talk during the meeting.

I am following up with this letter in hopes that by sharing some of the challenges my Agency has encountered during this global pandemic that the Board will gain a better understanding of the support that is needed by guardians. As an introduction, I have worked as a guardian for over 24 years and serve as the Executive Director of Puget Sound Guardians (PSG). PSG serves clients in Snohomish, King and Pierce Counties. I also serve on the Board of WAPG.

My Agency has been in the epicenter since the COVID-19 outbreak began in our State. PSG had three clients living at Life Care Center of Kirkland (LCCK), the facility the nation now knows by name after so many positive COVID-19 cases were identified and subsequent deaths occurred. On February 24th PSG staff were in the LCCK building visiting clients and, also bedside with a LCCK client who was receiving treatment at Evergreen Medical Center. On February 29th, we learned our client at Evergreen had tested positive for COVID-19. I reached out to Evergreen with concern of my staff's exposure while at LCCK and at Evergreen. Evergreen's only advice was to contact the Health Department. Unfortunately, the Health Department and CDC were already closed for the day and not open over the weekend. Come Monday morning, the Health Department was overwhelmed with phone calls and their phone lines crashed. I could not get through to the CDC. I had already self-quarantined our exposed staff and arranged for professional sanitization of my office. I then made a policy change such that effective March 1st all nonessential client visits were to be on hold while our staff's potential exposure and the community risk for COVID-19 was evaluated and guidance was issued by the Department of Health. I had previously purchased N95 masks and distributed those to our staff for any critically essential visit or medical appointments that arose.

A few PSG employees began working from home during the first week of March. It was a tremendous financial stretch, but I purchased tablets for all remaining office staff and after vast planning, IT involvement, creative thinking, and working together, all PSG staff were working from home on March 19th.

Very sadly one of our long-time clients passed away from COVID-19 on March 2nd. PSG served as her guardian for 18 years; she was 77 years old. PSG has three more clients who have died from COVID and two others that although not tested likely died from COVID. I have five more clients who have tested positive and are sick. All 11 of these folks are longtime PSG clients with an average of ten years under guardianship with us. The loss on multiple levels is huge. We have had 10 other clients pass away under normal or expected circumstances in 2020.

I cannot ask my staff to have direct contact with clients knowing that anyone can be an asymptomatic carrier. The Governor's stay at home order and social distancing are the sole effective tools we have to fight the spread of COVID-19. My agency may have been first to encounter the heartbreak of losing clients and also to feel an economic impact but others will be equally impacted as COVID continues to rampage through LTC facilities and AFHs.

I am seeking clarity from the Board on such matters as what does the "new normal" look like for guardians? What are the best practices that we should be following? Are there recommendations to follow for re-entry when it is safe and feasible so that we are not negligent in our enthusiasm to serve our clients? Are there any financial resources that the Board can advocate for on behalf of guardians? I am asking that the requirement for in-person client visits be suspended by the Board with a retroactive date of March 1st. If the Board does not have jurisdiction to make this decision than a show of support would be appreciated



I offer my experience and knowledge in any way the Board may find beneficial. I am confident that other WAPG Board Members would do the same. In this time of crisis, it is incumbent on the Board to lead and provide the guardians of Washington with (1) ongoing information about the virus, (2) best practices to maintain the health and safety of clients and guardians, (3) support and guidance for the mental toll on guardians, and (4) support and guidance for the economic toll on guardians. Beginning the week of April 20th, I am requesting weekly stakeholder meetings. These meetings could be help via Zoom and I would be happy to host along with a Board member. I look forward to a response from the Board.

Respectfully,  
Karen Klem Newland, CPG  
Executive Director  
Puget Sound Guardians



## COVID-19 Statewide Response Order No. 25700-B-617

THE SUPREME COURT OF WASHINGTON  
IN THE MATTER OF STATEWIDE RESPONSE  
BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY

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ORDER RE: VISITATION OF  
CERTIFIED PROFESSIONAL GUARDIANS  
No. 25700-B-617  
FILED SUPREME COURT STATE OF WASHINGTON  
APRIL 23, 2020  
BY SUSAN L. CARLSON, CLERK

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, during this state of emergency, the Centers for Disease Control and Prevention and the Washington State Department of Health have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces; and

WHEREAS, consistent with these recommendations, Governor Inslee issued and extended a "Stay Home, Stay Healthy" order directing non-essential businesses to close, banning public gatherings, and requiring Washingtonians to stay home except to pursue essential activities through at least May 4, 2020; and

WHEREAS, the Certified Professional Guardianship Board ("Board") via a memo from its Chair dated March 3, 2020, recognized the public health emergency and the importance of avoiding in-person visits by certified professional guardians ("CPGs") as circumstances dictate and the use of informed judgement; and

WHEREAS, the Board memo also stated the Board expectation that CPGs document their reason for not visiting an incapacitated person in person and the outreach that was done instead in accordance with Board Regulation 404.1; and

WHEREAS, preventing the further spread of COVID-19 continues to be a compelling concern, as well as CPGs' fiduciary duty to be informed and make decisions about the care and safety of incapacitated persons.

NOW, THEREFORE, pursuant to the Supreme Court's plenary authority with respect to guardianship practice and CPGs in their role as officers of the court, and the duty to ensure the safety of incapacitated persons, CPGs, and the public.

IT IS HEREBY ORDERED:

1. Certified Professional Guardians of the person must continue to be adequately informed to make decisions with respect to the care and safety of incapacitated persons. In accordance with Certified Professional Guardianship Board Regulation 404.1, the Certified Professional Guardian may use an alternative means of visitation such as: live video conferencing; telephone calls; interviews with third party experts such as medical providers; or interviews with care providers. CPGs shall continue to document the alternative means of visitation and outreach, along with documentation of the circumstances.
2. Nothing in this order prevents courts from developing and implementing jurisdiction specific procedures that meet the directives outlined herein.



3. This order shall cover the time period of the state of emergency due to COVID-19 and shall remain in effect until further order of the Washington Supreme Court.

DATED at Olympia, Washington this 23rd day of April, 2020.

For the Court Cheif Justice Stephens

## A Conversation With Justice Stephens



Dear Chief Justice Stephens:

I am writing on behalf of the Washington Association of Professional Guardians (WAPG) to thank you for your thoughtful order issued April 23, 2020 regarding visitation of Incapacitated Persons by Certified Professional Guardians.

The clients of Certified Professional Guardians are disproportionately affected by COVID-19.

As officers of the court, we greatly appreciate the direction and support of the Supreme Court to help ensure the safety of our clients, the public and ourselves.

Thank you again.  
Gary Beagle, NMG, CPG, OCPF President



Dear Mr. Beagle,

I truly appreciate hearing from you and your colleagues. But, all the thanks goes to the many professional guardians who work every day to keep our most vulnerable Washingtonians safe and well-cared for. And, I appreciate the Guardianship Board advocating the need for this emergency order. Your dedication is more important than ever during these challenging times.

Take care and stay safe,  
Chief Justice Debra L. Stephens

## MOU Template



Memorandum of Understanding (MOU) between  
(Insert Guardian Name/Entity) and  
Project Access Northwest  
Connecting Care Coordination to Guardianship Services  
A Partnership to Facilitate Community Placements

### BACKGROUND/OPPORTUNITY STATEMENT

Currently, when hospitals commence a guardianship proceeding, there are few resources – and in some cases no resources – available to pay a Guardian to assist an indigent person. Lack of a willing Guardian and uncertainty about the patient's income can frequently cause skilled care facilities and other residential care providers to refuse to accept a hospital patient as a resident. Care providers are reluctant to accept patients who do not have an identified decision maker for their care and personal needs.

These situations, which on average last for 3-4 months, present many challenges for the patient and the hospital. When the patient is ready for discharge, but awaiting a Guardian, the bed is not available for another patient who needs it. While the patient remains in limbo, there is no one to instruct the hospital in care decisions. Hospitals cannot employ or choose guardians directly because the Guardian could be viewed as lacking the necessary independence to make decisions, as required by law.

With limited funding provided by the Bill & Melinda Gates Family Foundation, Project Access Northwest will act as an intermediary to match potential guardians with up to 20 patients. These patients will be identified by participating hospitals to include those that the hospital has found to be without resources and/or family members and who are unable to make health care decisions for themselves due to incapacity. In this way, Project Access will act as a neutral third-party and remove barriers caused by any direction connection between hospital and guardian.

### PARTIES

Project Access Northwest (PANW) is a Washington State non-profit 501(c)(3) founded in 2006 to assure that low income patients receive appropriate and needed health care services. PANW has built a strong reputation of linking patients to needed appropriate donated specialty care services efficiently. PANW has an independent board of directors and corporate officers. The Board members are not paid for their time or services to PANW. The Executive Director reports to the Board of Directors. All other PANW staff report up through the Executive Director.

(Insert Guardian Name/Entity) is a program designed to guide the lives of our aging and disabled individuals by providing guardianship as well as life planning tools to those who otherwise may not have access to them. NorthStar is a non-profit, 501(c)3, charitable organization, that enables and facilitates people in creating supported decision-making agreements, end-of-life care plans, advanced directives and Power of Attorneys.



## SUMMARY DESCRIPTION

PANW has received a grant from the Bill & Melinda Gates Family Foundation that concludes on December 31, 2020, unless additional funding and agreements are made between the parties.

Connecting Care Coordination to guardianship services is designed to free up critical bed space, a mounting issue given the added pressures of COVID-19 that is overwhelming the hospital system that before the outbreak, already had limited bed space for those most in need.

In order to connect Care Coordination to guardianship services addresses the needs of patients, providers and hospital systems, PANW will:

- Facilitate the appointment of Guardians for indigent patients with experience in working with complex patients so that health care decisions can be made on behalf of that patient.
- Contract with multiple private professional Guardians and, using funds provided by The Bill & Melinda Gates Foundation, pass-through funding for up to 6 months to cover the costs incurred by the Guardian. This will allow the Guardian to make post-acute decisions and apply for public benefits that can provide financial support for the individual's future needs.

Using its pipeline of multiple private legal guardians, PANW will coordinate a match to the need of Harborview for a guardian. PANW will endeavor to make a connection within 21 days of request. There will be no requirement or jeopardy for PANW if we are not able to fill a request within the target of 21 days.

PANW's goal is to match up to 20 patients in need with guardians as requested by the referring hospital. If an assigned guardian needed additional services or resources for their client related to specialty care, then we would as with others, refer them to our Community Health Center or other community partners.

**UNDERSTANDING OF THE PARTIES – WORK FLOW** (Each participating hospital must outline the work flow for their organization as part of the MOU.) The following is the work flow for Harborview Medical Center:

1. Patient admitted, unable to make own medical decisions and no know Legal Next of Kin (LNOK).
2. Social Work (SW) will check in with Medical Doctors (MD's) and immediately start to search for LNOK.
3. If no LNOK, SW will discuss guardianship with team. SW continues to look for LNOK
4. If no LNOK is located, SW will start Guardianship Application (GA) – SW completes Guardianship Information Form (GIF) and Attending completes Physician Guardianship Form (PGF).
5. Once the GIF is complete, SW administration will submit GA and any additional documents to the UW Assistant Attorney General (AAG).
6. AAG office will review and then assign a Special Assistant Attorney General (SAAG).
7. SAAG sends petition to HMC Administrator on Call to sign off.
8. Once petition is signed off, SAAG office will petition the court for guardianship and given court date.
9. Concurrently, when SW Admin submits guardianship application to AAG, SW will send secure Email to PANW explaining that a guardian is needed for a case with a de-identified description of patient and needs.
10. Within 2 business days, PANW will acknowledge request and begin the process to identify potential guardian.
11. PANW will provide secure Email updates to the SW Admin once per week as needed on status of ability to identify potential guardian.
12. Once PANW identifies a potential guardian, that person will be introduced via Email to the SW Admin who will then provide contact information for the potential guardian to the SAAG.
13. At that court date, Guardian ad Litem (GAL) is assigned a hearing date along with the proposed Guardian.
14. GAL meets with patient/family/friends to gather information.
15. SW ADMIN will contact PANW via secure Email If GAL is / is not in agreement on potential guardian recruited by PANW.

16. SW Admin and SAAG confirm potential guardian and if there are any outstanding issues with the patient that the guardian will have to address.
17. During hearing, guardian will be appointed.
18. SW Admin will contact guardian to discuss discharge planning.
19. SW will contact PANW via secure Email once Guardian is appointed and provide court order appointing guardian.
20. Within 30 days of invoice by Guardian, PANW will provide Guardian with a payment of \$1500 for expenses related to the appointment.
21. Within 30 days of receipt of subsequent invoices, PANW will provide \$500 per month per client for no more than 6 months of service (not to exceed \$4500 per assignment)
22. PANW's payment to the Guardian is intended to provide the guardian with both incentive and time needed to access other funds to support any continuation of guardianship.
23. PANW will refer any requests for additional assistance made by the Guardian to the referring hospital to determine if alternate funding is available
  
24. PANW will not engage in any court or other legal proceedings associated with guardian assignment or placement.
25. PANW will not be involved in any reporting to the courts in relation to ongoing proceedings or ongoing needs of the hospital, guardian or client.

## GUARDIANSHIP SERVICES MEASUREMENT

PANW will track:

- Number of requests for guardians
- Number of attempts to secure a guardian once requested
- Number of guardians secured
- All MOU's and BAA's required to be submitted by each participating hospital and potential Guardians
- All payments to Guardians
- Suggestions for process improvements

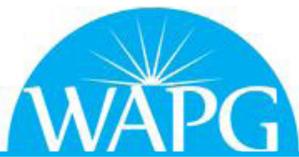
We hope to benefit from learnings of Harborview who may choose to engage in measurements that may include among other things:

- Hospital cost savings as a result of participation
- Increased number of available hospital beds
- Decrease in amount of hospital stays for those in need of a guardian
- Reduction in readmission rates for those assigned to a guardian
- Reduction in ED visits for those assigned to a guardian

PANW offers to help as we can to attract further funding to sustain and scale guardianship services in 2021 and beyond.

## TERM AND TERMINATION

This term of this MOU shall commence on the date signed by both parties ("Effective Date") and shall continue through December 31, 2020 unless sooner terminated pursuant to this section. Thereafter, this Agreement may be extended only upon mutual written agreement of the parties. Project Access Northwest may terminate this MOU with thirty (30) days' notice if (Insert Guardian Name/Entity) fails to deliver or fulfill its obligations in accordance with this MOU, Program specifications, and or legal and regulatory requirements.



(Insert Guardian Name/Entity) shall at all times maintain insurance of such nature and in such amounts as would be maintained by a prudent business person operating in the industry which in no event shall be less comprehensive than is customary in the industry and shall cover (Insert Guardian Name/Entity)'s potential liabilities.

FosBallard PLCC shall ensure compliance with state and federal privacy and security laws and regulations with respect to any protected health information ("PHI") (as defined by regulations promulgated under the Health Insurance Portability and Accountability Act of 1995, collectively referred to as "HIPAA") that it creates, receives, transmits and retains from the parties. The parties shall sign a separate Business Associate Agreement in the event one is required.

## Indemnification

Each party shall indemnify and hold the other parties harmless from and against liability arising out of the negligent acts or omissions of the indemnifying party or its agents or employees in the performance of this MOU.

## Relationship of parties

The parties to this MOU are independent entities. They do not intend and expressly disclaim that they are by this MOU becoming or agreeing to become partners or joint ventures. In addition, the parties each are and will remain, at all times, separate organizations, and except as expressly provided otherwise in this MOU, neither party will be deemed the agent, legal representative or partner of the other for any purpose whatsoever, and neither party will be responsible for any liability of any kind or nature of the other, whether arising before, during or after the term of this MOU.

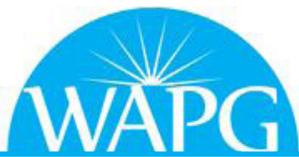
## Legal Compliance

The parties are aware of laws prohibiting practices involving kickbacks, rebates, payments for referrals, and the unauthorized practice of medicine. Each party acknowledges that it has entered into this MOU without intent to violate such laws. Further, each party believes that this MOU does not violate such laws. If any provision of this MOU is interpreted by judicial decision, a regulatory agency, or a party's legal counsel to be in violation of such laws, only that provision shall be void. The parties shall renegotiate in good faith the provision at issue and if it is not possible to modify the provision to the satisfaction of both parties, this MOU shall terminate automatically.

## Referrals

Nothing in this MOU shall be interpreted as requiring any party to make referrals of any items or services to the other parties in violation of any federal, state or local law or regulation.

Agreed to by:



## Project Access Northwest Business Associate Agreement

This Agreement is entered into between Project Access Northwest (hereinafter “Covered Entity”) and (Insert guardian name/entity) (hereinafter “Business Associate”). Covered Entity is a coordinator of health care services and as such, must comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively hereinafter “HIPAA”) including without limitation those regulations that govern the relationship between Covered Entity and Business Associate as well as requirements relating to patient records under applicable state and other federal laws.

Business Associate includes any agents and subcontractors of the Business Associate that receive, create, maintain or transmit protected health information on behalf of the business associate.

This Agreement is incorporated into all existing and current contract(s) between the parties (the “Underlying Contract(s)”) under which Business Associate is carrying out activities or functions involving the use of protected health information (PHI), as this term is defined in 45 CFR Parts 160 and 164, and it replaces any prior agreement(s) entered concerning such PHI. Business Associates must reasonably and appropriately implement the standards and implementation specifications for safeguarding PHI and ensure the confidentiality, integrity, and availability of all electronic protected health information the business associate creates, receives, maintains, or transmits under federal Privacy and Information Security regulations (45 CFR Parts 160 and 164 (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH) Act) and are subject to the application of civil and criminal penalties under sections 1176 and 1177 of the Social Security Act and financial penalties under 45 CFR Sections 160.402, 160.404, 160.408, 160.410, 160.412, and 160.418. Business Associates must also comply with all requirements for protecting patient information under State Privacy regulations including but not limited to RCW 70.02. Covered Entity is committed to providing high quality client care coordination. In furtherance of its mission, Covered Entity wishes to conduct transactions involving the disclosure of PHI to Business Associate for the purpose of conducting the activities set forth in the Underlying Contract(s).

Some or all of the information to be disclosed is required by law to be protected against unauthorized use, disclosure, modification or loss. In order to comply with applicable legal requirements for the protection of information, the parties agree as follows:

### A. ALLOWABLE USES OF PHI

Only the minimum necessary PHI to accomplish the intended purpose of this agreement can be used or disclosed only for the following purposes (accurately describe how and why PHI will be created, received, maintained, and/or transmitted):

1. In order to refer clients to (Insert guardian name/entity) for the purpose of obtaining a guardian pursuant to the MOU between HMC/UW Medicine and Project Access Northwest
2. In order to communicate the status of a referral or the need for additional information, pursuant to the MOU between HMC/UW Medicine and Project Access Northwest

### B. OBLIGATIONS OF BUSINESS ASSOCIATE

#### Section 1. Safeguarding Information.

A. Business Associate shall only use, store, disclose, or access PHI:



- (1) In accordance with, and only to the extent permissible under the Underlying Contract; and
- (2) In full compliance with all applicable laws, regulations, rules or standards, including, but without limitation HIPAA and RCW 70.02.

B. Business Associate shall have in place policies and procedures to implement and maintain all safeguards necessary to ensure the confidentiality, availability, and integrity of all Covered Entity data. Business Associate shall deploy appropriate safeguards to implement the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards.

C. Where applicable Business Associate shall report to the Covered Entity possible existence of identity theft (The Federal Trade Commission has regulations known as the Red Flag Rules which are part of the Fair and Accurate Credit Transactions (FACT) Act of 2003).

Section 2. Use or disclosure of Protected Health Information. Business Associate shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions ("HIPAA Standards"), or applicable provisions of Washington state law.. Business Associate shall ensure that any use or disclosure by its directors, officers, employees, contractors, and agents of PHI received from Covered Entity, or created or received on behalf of Covered Entity is in accordance with the provisions of this Agreement and applicable federal and state law. Business Associate shall not use or disclose PHI in any manner other than that permitted or required by the Covered Entity for the purpose of accomplishing services to or on behalf of Covered Entity in accordance with the Underlying Contracts. Notwithstanding the foregoing, Business Associate may use PHI for the proper management and administration of the Business Associate and to carry out its legal responsibilities.

Section 3. Reporting Unauthorized Use or Disclosure of PHI.

A. Business Associate shall, within five (5) working days of becoming aware of an unauthorized use or disclosure of PHI by Business Associate, its officers, directors, employees, contractors, agents or by a third party to which Business Associate disclosed PHI, report any such disclosure to Covered Entity. Such notice shall be made to the following:

Gary Renville, Executive Director  
Project Access Northwest  
Seattle WA 98122  
(206) 788.4204  
[garyr@secure.projectaccessnw.org](mailto:garyr@secure.projectaccessnw.org)

B. Business Associate shall report to the Covered Entity any Security Incident of which it becomes aware without unreasonable delay, but not later than ten (10) days, following Business Associate's discovery of any such incident.

Section 4. Agreements by Third Parties. Business Associate shall enter into a contract or other arrangement with agents or subcontractor(s) to ensure that the same restrictions and conditions including the implementation of reasonable and appropriate safeguards to protect PHI that apply to the BA also apply to the agents or subcontractor(s).

Section 5. Access to Information. If Business Associate maintains Designated Record Set (DRS) documentation on behalf of Covered Entity, Business Associate agrees to provide access to the documentation maintained by the Covered Entity. Business Associate shall make available to Covered Entity such information for so long as it is maintained. If any individual requests access to PHI directly from



Business Associate, Business Associate shall forward such request to the Covered Entity. Business Associate shall not deny any individual's request for access to the individual's PHI. A denial of access to PHI requested is the responsibility of the Covered Entity.

Section 6. Availability of PHI for Amendment. Within five days of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a DRS (for so long as the PHI is maintained in the DRS), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR. §164.526.

Section 7. Accounting of Disclosures. Business Associate agrees to implement an appropriate record keeping and reporting process to enable it to provide the following information regarding disclosures of PHI: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If Business Associate receives a request for an accounting of disclosures, Business Associate shall forward such request to Covered Entity within a reasonable time frame to allow Covered Entity to prepare and deliver any required accounting of disclosures.

Section 8. Restrictions on Certain Disclosure of Health Information. Business Associate agrees to restrict the disclosure of the protected health information of an individual, if Covered Entity agrees to a requested restriction by an individual. If Business Associate receives a request for a restriction, Business Associate shall forward such request to Covered Entity within five business days to allow Covered Entity to respond to the requested restriction.

Section 9. Availability of Books and Records. Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity, or created or received on behalf of Covered Entity, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Standards. Business Associate shall provide to Covered Entity a copy of any documentation that Business Associate provides to the Secretary within five business days.

Section 10. Return or Destruction of Information. At the termination of the Underlying Contract(s), Business Associate shall return or destroy all PHI received from Covered Entity, or created or received on behalf of Covered Entity, that Business Associate maintains in any form. Business Associate will retain no copies of PHI. If Business Associate determines that return or destruction of any PHI is not feasible, Business Associate shall notify Covered Entity of the reasons why return or destruction is not feasible. If destruction or return of PHI is not feasible, Business Associate shall not use PHI received from Covered Entity, or created or received on behalf of Covered Entity, in a manner other than those permitted or required by state and federal laws or for the purposes described herein.

Section 11. Electronic Protected Health Information ("ePHI"). If Business Associate creates, receives, maintains or transmits ePHI on behalf of Covered Entity, Business Associate agrees to (1) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Covered Entity's ePHI in accordance with 45 CFR Sections 164.308, 164.310, 164.312, and 164.316 of title 45; (2) ensure that any third party agent or subcontractor who receives Covered Entity's ePHI from Business Associate agrees to implement equivalent administrative, physical and technical safeguards; and (3) deploy appropriate safeguards to implement the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards; and (4) report any security breaches involving Covered Entity's ePHI within five business days of discovery.

## Section 12. Breaches Involving Unsecured PHI.

A. A breach is when unsecured PHI may have been used, accessed, disclosed, or acquired in a manner not permissible under the terms of this Agreement. Unsecured PHI means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111–5. If Business Associate has reason to believe that a breach has occurred, Business Associate will, within five business days of discovery, give Covered Entity notice.

A breach shall be treated as discovered by the Business Associate as of the first day on which such breach is known to the Business Associate, (which includes any person, other than the individual committing the breach, who is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred. Business Associate shall give highest priority to immediately mitigate and remediate any unauthorized access and shall devote such resources as may be required to accomplish that goal. The Business Associate shall cooperate with all Covered Entity efforts, including providing any and all information necessary to enable Covered Entity to fully understand the nature and scope of the breach including but not limited to identification of each individual who has been affected by the breach.

B. The Business Associate will investigate a breach of unsecured PHI to determine if the PHI has been compromised based upon a risk assessment in accordance with Section 164.402 (2).

C. If it is determined that the PHI has been compromised, Covered Entity is required to provide notice to any or all individuals affected. In such case, Business Associate shall consult with Covered Entity regarding appropriate steps required to notify third parties. In the event that the Business Associate's assistance is required, such assistance shall be provided at no cost to Covered Entity and in accordance with the Covered Entity's policies and standards. Business Associate must coordinate with Covered Entity any public notification to any individual, media outlet, or the Secretary of Health and Human Services.

D. If it is determined that notification is required, the Business Associate shall pay the full costs of notice to affected individuals, including the costs to retain an outside consulting firm to undertake the notification effort and will supply Project Access Northwest with the following information to make such notification:

- (1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
- (2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
- (3) A brief description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

Section 13. If the Underlying Contract does not include a provision for indemnification, then the Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any penalties, claims, actions, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys' fees.

Section 14. Covered Entity has the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith, within the limits of Business Associate's technical capabilities. .

## C. MISCELLANEOUS

Section 15. Termination. Notwithstanding any provision to the contrary in the Underlying Contract(s), Covered Entity may terminate its participation in the Underlying Contract(s) immediately upon written notice to Business Associate without liability for such termination, in the event that Covered Entity determines that Business Associate has committed a material breach or violated a provision of this Agreement.



Section 16. Definitions. All terms herein shall be defined in accordance with 45 CFR Parts 160, 162, and 164 and state laws governing healthcare privacy including but not limited to Public Records - Personal Information – Notice of Security Breaches (RCW 42.56.590), the Uniform Healthcare Information Act (RCW 70.02), mental illness (RCW 71.05), mental health services for minors (RCW 71.34), drug and alcohol abuse (RCW 70.96A, 42 CRF part 2), and HIV/AIDS/STDs (RCW 70.24).

## Connecting Care Coordination to Guardianship Services A Partnership to Facilitate Community Placements



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### Background/Context:

Patients without resources and/or family members who are unable to make health care decisions for themselves due to incapacity languish in hospitals as Guardians are sought through the Court system. There is no one to address their post-hospital care, consent to a discharge plan, select another housing arrangement or care facility. Nor is anyone available to assemble the necessary documents and information and to apply for benefits such as Medicaid, COPES and VA benefits. Often, this situation means that patients who could otherwise be discharged linger in the hospital, as the hospital asks the court system to appoint a Guardian who can make decisions for the patient.

After a hospital commences a guardianship proceeding, there are few resources – and in some cases no resources – available to pay a Guardian to assist an indigent person. Lack of a willing Guardian and uncertainty about the patient's income can frequently cause skilled care facilities and other residential care providers to refuse to accept a hospital patient as a resident. Care providers are reluctant to accept patients who do not have an identified decision maker for their care and personal needs.

These situations, which on average last for 3-4 months, present many challenges for the patient and the hospital. When the patient is ready for discharge, but awaiting a Guardian, the bed is not available for another patient who needs it. While the patient remains in limbo, there is no one to instruct the hospital in care decisions. Hospitals cannot employ or choose guardians directly because the Guardian could be viewed as lacking the necessary independence to make decisions, as required by law.

According to Harborview, for every 1 patient awaiting a guardian, they are occupying a bed that could be used by approximately 17 patients; in addition, hospitals do not want to expose individuals who do not need to be in a hospital to other conditions; particularly in these times with limited Personal Protective Equipment (PPE) and other resources.

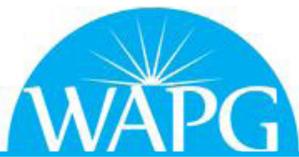
Connecting Care Coordination to guardianship services is designed to free up critical bed space, a mounting issue given the added pressures of COVID-19 that is overwhelming the hospital system that before the outbreak, already had limited bed space for those most in need.

### Summary of the Concept

In the same spirit that Project Access Northwest began, connecting Care Coordination to guardianship services addresses the needs of patients, providers and hospital systems.

- Project Access Northwest will facilitate the appointment of Guardians for indigent patients so that health care decisions can be made on behalf of that patient.
- Project Access Northwest will not engage in any court or other legal proceedings associated with guardian assignment or placement.
- Project Access Northwest will contract with multiple private professional Guardians and, using funds provided by hospital partners, pass-through \$5,000 in funding for up to 6 months to cover the costs incurred by the Guardian.

This will allow the Guardian to make post-acute decisions and apply for public benefits that can provide financial support for the individual's future needs. Guardians are attracted to this type of arrangement because they are able to be compensated for their services without having to wait for other forms of reimbursement. Estimated number of individuals who will benefit and/or beds that will be made available



The number of individuals in need of guardians varies, but on average, Harborview has approximately 20 patients per month that need a Guardian and have to work through the Court System. Current numbers are not available for the Puget Sound Area, but have been estimated to be 300 annually. By providing a link to guardianship services, Project Access Northwest could potentially reduce the amount of time it takes to have a Guardian appointed from 3-4 months to less than 21 days.

If one assumes 20 patients per month in a bed for 120 days, this is 2,400 patient days that cannot be used for a patient in need of acute care. If we can reduce the time to 21 days, it would save 1,980 patient days. Assuming an average length of stay of 7 days for most patients, this would free up beds for more than 280 patients.

## Process Overview

Project Access Northwest develops a pipeline of multiple private legal guardians who can be called on when guardians are requested by Harborview (and/or other hospital partners).

Agreements will be signed between Project Access Northwest and private legal guardians that do not exceed a six-month time span.

Using its pipeline of multiple private legal guardians, Project Access Northwest will coordinate a match to the need of a hospital for a guardian, to a private guardian. We will endeavor to make a connection within 21 days of request by the hospital. There will be no requirement or jeopardy for Project Access Northwest if we are not able to fill a request within the target of 21 days.

For Project Access Northwest the scope of work is to match up to 21 patients in need with guardians as requested by the hospital(s). If an assigned guardian needed additional services or resources for their client related to specialty care, then we would as with others, refer them to our Community Health Center or other free/faith based clinic partners.

All legal work between guardians and in this case Harborview, and/or other additional hospital partners would be handled between the hospital and their own legal department. Project Access Northwest would not be involved in any court proceedings in regard to guardianship placement.

#####

Project Access Northwest is a non-profit 501(c)3 formed in 2006 to improve access to specialty health care for low-income and uninsured patients. It matches volunteer specialty care providers and hospital partners with carefully pre-screened patients in need of care. Originally started in King County (Washington state), it has since expanded its service area to include Kitsap and Snohomish counties. Project Access Northwest also provides dental care in King County to qualifying Northwest Kidney Center patients.

From the beginning, Project Access Northwest has specialized in Care Coordination, matching volunteer specialty care providers and hospital partners with carefully pre-screened patients in need of care. Even with the implementation of the Affordable Care Act, the need for better access to health care services — especially specialty dental care — remains. Project Access Northwest remains committed to matching patients in need with caring volunteer providers and to developing innovative programs that improve health care access in our region.

It also developed the statewide Premium Assistance program to assist those who are eligible to purchase private health insurance on the Washington Health Benefits Exchange but for whom paying the premiums is a financial hardship.

## Contact:

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Executive Director

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## Office of Guardianship and Elder Services



WASHINGTON  
COURTS  
ADMINISTRATIVE OFFICE OF THE COURTS

May 4, 2020

Dear Certified Professional Guardianship Board, Certified Professional Guardians, and stakeholders:

The University of Washington Continuum College (UWCC) has advised the Administrative Office of the Courts (AOC) that UWCC must put the Guardianship Certificate Program (the Program) on hiatus for the 2020-2021 school year. The year will be used to redevelop the Program to reflect the newly passed Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA). The UWCC also plans to use this time to move to an exclusively online format to improve accessibility to students across the state. Providing greater accessibility to potential enrollees from all parts of Washington aligns with demographic trends and the need for entrants to the profession.

The AOC and the UWCC have been in discussions regarding the factors affecting the timeline for the redevelopment of the Guardianship Certificate Program. The UWCC previously planned on putting the program on hiatus for the 2021-2022 academic year. However, recent events and information have brought forth additional impactful considerations.

The effect of the COVID-19 pandemic has left uncertainty in the landscape of the 2020-2021 academic year. The social and economic impacts of the COVID-19 outbreak are unknown but expected to be significant. The potential for lower enrollment in the 2020-2021 academic year is substantial. UWCC informed the AOC that low enrollment would cause the UWCC to place the Program on hold for that particular academic year. While the future remains undefined for all at present, uncertainty is likely to decline over time.

The AOC made a 2020 session legislative request for Program redevelopment funding with input from the UWCC. The Program redevelopment funds request was premised on keeping tuition for the course at the current rate. The Legislature's appropriation for program redevelopment is only available in State fiscal year 2021 (July 1, 2020 to June 30, 2021). Washington State vulnerable adult demographics strongly indicate a continuing need for guardianship services in the state. Maintaining an affordable professional certification course is a critical issue, and ties directly to this appropriation.

The AOC is sharing this information about the 2020-2021 academic year hiatus with all stakeholders as it is understood that this decision impacts all of the guardianship community.

Sincerely,  
Stacey Johnson, Manager  
Office of Guardianship and Elder Services

## Certified Professional Guardianship Board



**WASHINGTON  
COURTS**  
ADMINISTRATIVE OFFICE OF THE COURTS

Dear Certified Professional Guardians:

The working conditions created by Covid-19 have significantly impacted the demands on CPGs and have also required you to develop a range of innovative methods to continue your care for clients.

As the members of the Certified Professional Guardianship Board, we want to express our deepest respect, admiration and gratitude to all of you, for your dedication to serving and protecting the most vulnerable members of our communities across Washington.

As members of the Board, we want to acknowledge the extraordinary challenges you all are facing in your efforts to provide support and advocacy for your clients. As CPGs, you are very much on the front lines of care, along with physicians, nurses, social workers and others.

All of you have chosen to dedicate your professional lives to caring for others and we are deeply indebted to you for that choice.

Thank you for your service; we extend our best wishes to you and your loved ones during this unprecedented time.

Respectfully,  
Judge Rachelle E. Anderson, Chair  
Certified Professional Guardianship Board

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