

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1388

2001 HOUSE HUMAN SERVICES

HB 1388

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388

House Human Services Committee

☐ Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		700 to 4675
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Vice Chairman Devlin: Open hearing on HB 1388.

Rep. Scott Kelsh: Presented Bill. This bill will ensure that those who provide guardianship services meet the minimum national standards to guaranty standards of care to those most vulnerable in our society. I ask for a DO PASS on HB 1388.

Rep. Porter: With the standards of practice that are in place, I don't see anything that has to do with penalties if someone does not follow standards of practice.

Rep. Kelsh: I understand the Attorney General's office is administering this.

Rep. Porter: Would it be a civil or criminal penalty not to follow what you are proposing here?

Rep. Kelsh: I'm going to defer that question to members of the Guardianship Association.

Rep. Cleary: Are there training sessions in North Dakota for guardians?

Rep. Kelsch: Again, I will defer that question to a member of the Guardianship Association.

Paul Griffin: Executive Director of Catholic Family Services. (See support of HB 1388 in written testimony.) We do believe there is an established need for guardianship in North Dakota, a need that is not being met through the traditional means. The Guardianship Association has focused its efforts in terms of trying to develop alternatives. We do have some legislation pending in the Senate regarding the expansion of services to other populations. We also are making funding available for the continuation of Partners Training Program.

Rep. Porter: In looking at the standards of practice it talks about a whole array of levels of certification. What levels would you see coming into play for the State of North Dakota. What category is a Master Guardian?

Paul Griffin: We do have a wide range of people that serve guardians. We have family members, volunteers, then we move up to professionals. We would anticipate through the course of working through and refining standards, there would be some ability for us to differentiate between what the standards of expectations are for a family guardian as opposed to someone on a professional level.

Rep. Porter: What about those people who are doing a good job, and then being out of work because of their failure to have the education involved with this? Legislation says nothing about grandfathering these people in.

Paul Griffin: We are going to have to work this out in conjunction with the Attorney General's Office, the Department of Human Services, and others involved. Those things definitely can be sorted through. The intent is not to exclude people from serving as guardians, but to improve the quality of service.

Rep. Porter: What happens if someone doesn't follow the standards the Attorney General would adopt?

Paul Griffin: The courts are responsible for monitoring the performance of the guardian.

Rep. Porter: Where would money come from in the Attorney General's budget if Moines aren't appropriated in the bill?

Paul Griffin: At this point I would be at a loss to tell you where the Moines would come from.

Rep. Galvin: An Executor or Power of Attorney, would they be in conflict with a guardian in any way?

Paul Griffin: Many of the people who would serve as guardians, also serve in those capacities.

Rep. Cleary: A judge appoints a guardian; how do they know about the training?

Paul Griffin: We are hoping that as we work toward establishing the standards as we work with the judiciary, that what will happen automatically is that courts will require that person show proof they have gone through training. At this time there is no requirement for them to be trained.

Senator T. Mathern: I am a cosponsor of this will. The attempt here was to put a process in place. Your committee could add to this to make it a stronger bill. I encourage your support of this bill.

Vice Chairman Devlin: Ms. Taber, do you have an estimate what the fiscal note might be?

Sandy Taber: Deputy Attorney General. We were thinking about \$50,000. You obviously need some funding to provide staffing. More importantly, there is going to be some training. We want and need the support of the Human Services Department to help us do this.

Vice Chairman Devlin: We will ask the Legislative Council for a fiscal note.

Melvin Webster: Lawyer, Bismarck Practice. (See support of HB 1388 in written testimony.)

The Century Code says very little about what a guardian must do or should do. There is very little direction given to a guardian. I see these standards providing that guidance. Most of the guardians are looking for guidance.

Senator T. Fischer: I am here to support this bill. There have been serious violations in the guardianship program.

Carol Watrel: Volunteer Guardian, Catholic Family Services. I hope you will support this bill.

It is an overwhelming job. I don't know how I would have begun to do this without help.

Norm Stuhmiller: Representative of Silver Haired Assembly. We are looking for guidelines. I am in support of this bill.

Cathy Hogan: Director of Cass County Social Services. There have been complaints of guardianship and quality of service. Particularly of financial exploitation. We need to establish standards. This bill is really about protecting the most vulnerable people in our society. I strongly urge you to DO PASS this bill.

Rep. Niemeier: Aren't court appointed guardians paid a stipend?

Cathy Hogan: The law allows for a guardian to either take a percentage of the income or to bill an hourly rate.

Rep. Niemeier: Would these standards address these situations too?

Cathy Hogan: Yes, one of the things we want standards on.

Vice Chairman Devlin: Close hearing on HB 1388.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388 A

House Human Services Committee

☐ Conference Committee

Hearing Date February 6, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		2470 to 3690
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

COMMITTEE WORK:

Chairman Price: The guardianship Bill 1388. Fiscal note is \$50,000. Discussion.

Rep. Cleary: I think that guardianship is a really important issue. It is really difficult to find guardians and then they need adequate training.

Rep. Welsz: Is there a reason the Attorney General should adopt?

Chairman Devlin: During the committee testimony we talked about adding the words in conjunction with the Department of Human Service after the Attorney General on line 3.

Rep. Porter: No matter how much training you offer the individuals doing the guardianship work, you're still not going to prevent situations that have happened such as in Fargo and other places where people have misused their power and authority. Is there currently a bonding requirement for people who decide to be guardians, even if they are doing it on a voluntary basis?

Chairman Price: Part of it is that by adopting some standards, then the court can have some guidelines when they feel there is an improper use of their power. Makes it a little bit easier to prosecute.

Rep. Doseh: It is my understanding of the bill that the main thrust is to adopt some sort of standards - that we don't have any right now. I think that is good, but I'm not so sure that we need a fiscal note - that we need to spend that money. I don't think we need to go any further than that.

Chairman Price: If we did pass the bill with a fiscal note, it would have to go to Appropriations. They could decide if the Attorney General got the extra money or did it within the budget.

Rep. Pollert: The Guardianship Association is basically following those guidelines anyway, so aren't they going to adhere by that anyway? Aren't we really accomplishing anything?

Chairman Price: No one came in from the Attorney General's Office at all on this, did they?

Chairman Devlin: There was no testimony from Sandy.

Rep. Metcalf: They are developing tapes that would be at the Clerk of Court throughout the state so lay people could check out these training tapes.

Rep. Niemeier: I have been told they are using some Ivan training.

Chairman Price: If we believe this is a good idea, Appropriations will be taking a look at whether to give the Attorney General additional funds. What are your wishes?

Rep. Niemeier: I would move a DO PASS and rerefer to Appropriations.

Chairman Price: (Amendment Discussion.)

Chairman Devlin: Moved to accept amendments.

Rep. Metcalf: Second.

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House Human Services Committee
Bill/Resolution Number HB 1388
Hearing Date February 6, 2001

Chairman Price: All in favor of amendment signify by saying Aye (voice vote passes.) We have an amended bill in front of us.

Rep. Niemeler: I would move amended Bill 1388.

Rep. Cleary: Second.

Chairman Price: We have a motion for a DO PASS as amended and rerefer to Appropriations. Discussion? The clerk will take the roll on a DO PASS.

9 YES 5 NO 0 ABSENT CARRIED BY REP. CLEARY

FISCAL NOTE
Requested by Legislative Council
01/29/2001

Bill/Resolution No.: HB 1388

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$50,000			
Appropriations			\$50,000			

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill requires the Attorney General to develop and implement standards of practice for guardianship services. A committee would develop the standards and the Office of Attorney General would implement the standards. A significant portion of the \$50,000 relates to training to be provided during the implementation phase.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathy Roll	Agency: Office of Attorney General
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Phone Number:

328-3622

Date Prepared: 02/01/2001

10721.0101
Title.0200

Adopted by the Human Services Committee
February 6, 2001

VR
2/6/01

HOUSE AMENDMENTS TO HB 1388

HOUSE HS

2-7-01

Page 1, line 3, after "general" insert ", In cooperation with the department of human services,"

Renumber accordingly

Date: 2-6-01
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1388

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken accept the amendment

Motion Made By Devlin Seconded By Metcalf

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman			Rep. Audrey Cleary		
Rep. William Devlin, V, Chairman			Rep. Ralph Metcalf		
Rep. Mark Dosch			Rep. Carol Niemeler		
Rep. Pat Galvin			Rep. Sally Sandvig		
Rep. Frank Klein					
Rep. Chet Pollert					
Rep. Todd Porter					
Rep. Wayne Tieman					
Rep. Dave Weiler					
Rep. Robin Weisz					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1388

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass as Amended & Be Referred to Appropriations

Motion Made By Memm Seconded By Cleary

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman		✓	Rep. Ralph Metcalf	✓	
Rep. Mark Dosch		✓	Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert		✓			
Rep. Todd Porter	✓				
Rep. Wayne Tleman	✓				
Rep. Dave Weller		✓			
Rep. Robin Weisz		✓			

Total (Yes) 9 No 5

Absent _____

Floor Assignment Rep. Cleary

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 7, 2001 3:54 p.m.

Module No: HR-22-2645
Carrier: Cleary
Insert LC: 10721.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1388: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1388 was placed on the Sixth order on the calendar.

Page 1, line 3, after "general" insert ", in cooperation with the department of human services,"

Renumber accordingly

2001 HOUSE APPROPRIATIONS

HB 1388

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB1388**

House Appropriations Committee

☐ Conference Committee

Hearing Date **February 14, 2001**

Tape Number	Side A	Side B	Meter #
1	x		3860 - 6244
		x	0 - 1119
Committee Clerk Signature			

Minutes:

HOUSE APPROPRIATIONS COMMITTEE HEARING ON HB1388.

Rep. Timm: We have HB1388 and the main sponsor is here. Rep. Kelsch and Sen Mathern.

Rep. Mathern: I don't see Rep. Kelsch, and I'm one of the cosponsors of the bill and if you wouldn't mind I will just go ahead. Basically, this bill would set a process in place so we develop some standards for guardianship, persons who are unable to make decisions regarding their own care often need a guardian. That's a legal decision making process put into somebody else's control. This bill would suggest that we have standards in place and I believe the Human Service Committee amended the bill to include not only the Attorney General but the Human Service Department, I think that's a great amendment, and there are people who are specialists in this area who are willing to testify, if you would like to have somebody, but I encourage your support of this bill. There is a companion bill in the senate that deals with an appropriation process of

guardianship services, I don't know where that bill is going in terms of paying for the costs of guardians, that's an important bill too, but this bill is to set up the standards.

Rep. Timm: Senator Mathern I don't know and maybe you can't answer this but there is a fiscal note on the bill for \$50,000, its not an appropriation, is that money coming out of the Attorney General's budget then? Is it going to cost his department \$50,000.

Sen. Mathern: If you do not appropriate a separate allocation that's where the money would come out of, basically that appropriation is the Attorney General's estimate of what it would cost them to look at these national standards and then develop some local standards that would then go into effect in North Dakota. They would probably have to hire staff to do some of that work and that's where that fiscal note would come from.

Rep. Timm: The amendment is on page 1 line 3 after the word "General" insert "In cooperation with the Department of Human Services" and the fiscal note is \$50,000.

Sen. Mathern: Basically, the Department of Human Services right now is contracting with organizations to provide guardianship service and I'm sure that your house committee thought the Attorney General ought to be working with that agency and making sure these rules get developed correctly. I believe that the Attorney General's office did testify in the Human Service Committee of the House regarding the cost of developing these rules and I'm sure the Attorney General could testify in your committee also, but I understand that's what happened and they indicated what the cost would be to in fact develop these rules and get them implemented.

Rep. Byerly: Its a minor point, but all rules have to go through the Attorney General's office, Its a minor point but the way the rules process works they already have to go through the Attorney General's office, and I'm a little confused why the agency the Department of Human Services handles all guardianships while the Attorney General was the one designated in the original bill

to develop the guidelines, normally it would be the department, and then like I said, under our Century Code all administrative rules have to go to the Attorney General for review anyway.

Sen. Mathern: It's an important point, basically there was concern on the part of the service providers in the state that there could be a conflict of interest in that. Most of the services that are provided for persons who need guardianship are provided by the Department of Human Services, so If the Department of Human Services is providing the service and developing the rules regarding the quality of guardianship services there could be some conflict of interest. It was the concern that maybe it should be done by the Attorney General so that there would be less conflict. I think, to be frank with you, that there was a feeling on the part of many people who supported the bill that the Attorney General that we have is someone who has experience in his private career regarding guardianship, and regarding issues like this and maybe that expertise would be useful in the development of the rules.

Rep. Timm: Thank You. Any other questions?

Sen. Fischer: I'm here to support this bill, and the question about the Attorney General, we met with the Attorney General and he would like to coordinate with the Department of Human Services as far as any rule making process in this bill. Other than that, there is a companion bill in the senate now with a large appropriation that has to do with training non volunteers, that will obviously will be adjusted and what it comes down to is that the fees are \$3.20 per day per person so a person could adjust that from the fiscal note on that one is \$440,000. With that, I support the bill and the standards and practices so that we at least can get that portion of it up and running, because as the state ages and more young people moving out of the state I think it is something that is going to be needed in the future than it is today.

Rep. Skarphol: Sen. Fischer is kind of your intention that were going to have a group of people that do this as a profession and prohibit family members from being guardians unless they are specifically trained for it?

Sen. Fischer: No I don't think that's the intent at all, the problem that I see is the lack of family members to take those roles and under some conditions family members would not be appropriate guardians.

Rep. Skarphol: I don't argue that point, but my point is that if someone wishes to be that is a family member are they going to be prohibited from being if we adopt these model things that a lot of times just get us in trouble. Answer was: I would hope not.

Rep. Carlisle: If I understood Sen Mathern correctly, He said there is \$50,000 and you might need an FTE out of the Attorney General's office. Is that correct?

Sen. Mathern: I think the Attorney General's office said that they needed about \$50,000 of time to accomplish putting these rules together, and I presume that's not an FTE, but I presume they would be using the staff that they have, and that staff is worth something and that's the price they put on it, but this is not authorizing a staff FTE but I presume they would use their FTE's and pay for them with this \$50,000.

Rep. Skarphol: Can you tell us the number of the companion bill in the senate?

Sen. Mathern: The companion bill in the senate is SB2329 and it has about a \$500,000 fiscal note on it, basically that bill pays for training of volunteers to become guardians and it pays for professional guardianship service. The bill that you have before you sets up the standards that we would have in our state for people who become legal guardians.

Rep. Glassheim: If SB2329 is not funded either fully or in part, are those standards still useful and applicable.

Sen. Mathern: Yes they are still useful, still applicable and there are many persons who use guardianship in the state, many courts order guardianships to be open and there are still applicable and in fact in Cass County we have considerable problems with some inappropriate activity on the part of guardians and that really is part of the genesis of the bill is to make sure that those people who are put into the position of being guardians have to meet certain criteria in terms of how they carry out there functions. There are a lot of complicated issues in terms of making decisions about medical care, making decisions about assets, making decisions about activity of the ward.

Rep. Kempenich: Do we have anything in place now that sets some guidelines for guardians?

Rep. Mathern: There are some state laws regarding the role of the guardian, but there are no standards in place in our state for guardians at this point.

Rep. Monson: If we don't have standards in our state, don't we just have to follow the national guidelines?

Rep. Mathern: No we don't. The national guidelines are a voluntary kind of listing of standards that people ascribe to that are members of the National Guardianship Association but that is a voluntary organization and people in this state do not have to ascribe to those standards to be a guardian.

Rep. Kelsch: We just want to make sure that we have a standards and practices in place in North Dakota that ensures that people who are receiving guardianship services are guaranteed a minimum of professional standards. With that I can answer any questions.

Rep. Aarsvold: What are some of the situations that might deem guardianship necessary?

Rep. Kelsch: I am not as familiar with it as some other people here in the room are with t guardianship services but I would ask you to redirect that question to people who are following me.

Rep. Kempenich: Is there a fee that goes along with that, to belong to that.?

Rep. Kelsch: I don't know that I have the answer for that right now, but I will get the answer and let the committee know.

Rep. Timm: Any body else who would like to testify in favor of this bill?

Mel Webster, Lawyer from Bismarck: I appear this morning in support of HB1388, one of the questions that arose was when is a guardianship required. A guardianship is required whenever a court of law should determine that an individuals incapacitated to the extent that he or she cannot make reasonable decisions in their own behalf. Many times or sometimes you have powers of attorney which are adequate to address those problems and a guardianship does not become necessary if the individual has done some advanced planning for incapacity. Another question which arose was in regard to families, and the standards of guardianship would provide some general guidelines for guardians, right now the North Dakota Century Code contains a section regarding the powers and duties of guardians, its extremely sketchy and there are some limitations on the authority of the guardian, such as a guardian cannot authorize an abortion, sterilization, experimental treatment, but beyond that they really do not provide the guardian much guidance and there is a need for standards because we have a lot of people, we have people serving as guardians who are not family members, usually when there are family members you don't have to many problems, but you have as was the case in Fargo a public administrator serving as guardians, you have Catholic Family Service serving as a nonprofit guardianship provider, there is frequently a need for volunteer guardians, where family members are not

appropriate and the adoption of standards would provide some very simple guidelines for these people to follow and for a court to look at in the event that there was ever any difficulty as to whether or not a guardian was actually fulfilling their duty or neglecting their duty. I think the adoption of these standards would clarify the role of guardians for people who are volunteers, for people court appointed guardians and I urge your support of this measure.

Rep. Kempenich: I have problem with an agency setting up the rules of this, would it be pertinent to certain areas? Because this here basically is a repeater of the century code with this bill, so your going to have some rules that are going to be drafted, but if this bill would pass you would have the rules that were drafted by the Attorney General's Office and yet we would still have some language in the Century Code that would be dealing with the same issue and I was just wondering if it would be more pertinent to have the bases rules in the Century Code instead of in the administrative code?

Mr. Webster: It is my opinion that it would be better to have the rules developed first of all and I think it would be quite extensive if we included all of the standards that would be appropriate in the Century Code. I don't anticipate that there would be any conflict, the Century Code of course would control the laws that you folks have passed and the governor has signed and so the general guidelines in the Century Code would still be there, but they would be such simple guidelines, for instance, I encountered a situation once where a guardian had never once visited his ward. One of the standards in the standards of practice developed by the National Guardianship Association is that that guardian would visit ward monthly which seems appropriate if your making personal decisions for that individual, and I think it would be to cumbersome if we put all of these standards in the Century Code.

Rep. Monson: I have a whole bunch of questions about just what a guardian does? How much do they get paid? ? Who appoints them? Are they lawyers or are they just individuals off the street? Can Rep. Glassheim here be a guardian?

Mr. Webster: That's a pretty lengthy question, and I will try to answer it the best that I can. First of all, I'm a lawyer and I go to court to get people appointed as guardians when and where as necessary and I think I have the easy part of the job. I never serve as a guardian or a conservator for an individual. A guardian is appointed only by a court of law and anyone who is an adult is eligible and the North Dakota Century Code has, and yes, all of you are eligible. The North Dakota Century Code has a priority list as to can serve and who should serve and its a family priority list and the highest individual would be a spouse, if there is no spouse, then adult children, and then relatives who have had close relationships and individual can nominate someone in a durable power of attorney and that individual would have the highest priority. Its necessary to show in a court of law by clear and convincing evidence that the appointment of a guardian is necessary and if your going to appoint anyone outside the priority list you must show by clear and convincing evidence that it is in the individuals best interest and then the court could disregard the priority and appoint someone else.

Rep. Timm: When my mother went into the nursing home I was appointed her guardian and conservator both. Now would I have had to live up to some different kind of standards or would I have had to read a pamphlet or something in order to serve as a my mother's guardian back then?

Mr. Webster: No.

Rep. Timm: If this law goes into effect what happens then?

Mr. Webster: If this law goes into effect and standards are developed it would be as I see it would be guidelines for you to follow, guardians are appointed. Basically, you are trying to do

the best that you can for the individual and this would provide guidance for instance where an individual is in a nursing home and is incapacitated and unable to make medical decisions, and the individual says how do I do that? This provides some guidelines on how a guardian gives informed consent to the health care provider, basically its the general rules that have always been followed if the individual has expressed a desire previously the guardian follows that, if the individual has not, then its a decision made on the best interest of the individual, I see it as providing a guideline for someone who is appointed a guardian and if a question arises they can look at these standards, it would be standards that could be used to provide training for individuals.

Rep. Skarphol: When you read the language of either the Senate Bill or this House Bill, it says relating to the provision of a guardianship services system or for the standards and practices of guardians, and I'm assuming, and I would almost propose an amendment to ensure that we are also addressing the conservator ship, because they are two separate issues and I think addressing one without the other is inappropriate and I think there are fiduciary responsibilities, unless you can assure me that this addressees that it would be fine.

Webster: I believe the bill says standards for guardians, I certainly would not object to having these standards also apply to conservator ship, and as you pointed out they are very closely inter related and in fact the last amendment to the guardianship statute of the code, gives the guardian the authority to handle any financial matters and in effect a conservator. So I think that would be an appropriate amendment.

Rep. Timm: Any other questions of Mr. Webster?

Bill Scholze, President of the North Dakota Guardianship Association: When we got involved with this bill, all of a sudden it was costing \$50,000, we simply wanted to have a

standard for families and unpaid volunteers, people that start up in guardianship, corporate guardians and private for profit guardians, and we didn't mean to discriminate against families who serve as guardians. We think this is very important, and in our office we often get referrals on how to get involved in guardianship, families will contact hospitals or they will contact us, and we will just inform them of the procedure and probably tell them to contact their family attorney and proceed from there. The question on conservator ships, the reasons for standards and practices for guardians is that some states don't have conservators anymore, they have financial guardians, some states have dropped them. Some states such as Minnesota have financial guardians for the person, and they also have conservators for the person, and the distinction I'm not quite sure. The point is that when they are saying standards and practices regarding this, they do mean conservators. We didn't mean for this to be a costly program but just something when we set up the guardianship association four years ago, it was to train and establish standards and a code of ethics for people who are involved as guardians. Particularly families who don't know what to do next.

Rep. Kempenich: Your organization, have you adopted these practices already?

Scholze: Yes, we did adopt them at our October meeting in Fargo.

Rep. Skarphol: What is a guardian typically paid?

Scholze: Anywhere from nothing to a monthly fee or some charge hourly.

Rep. Timm: Any other questions?

Norm Stumiller, Representing the Silver Haired Assembly: Of the three issues that came to light at this assembly this August, this was one of them and the reason this came to light that these older people came and they have all kinds of horror stories where somebody was a guardian for somebody and they were not monitored closely enough, didn't know the rules or

regulations and absconded with a lot of funds. We hope that by passing this bill it would virtually eliminate that, there idea was little more simple that this and when I talked to some of the people here today they said lets go for the whole bill. So I hope you do put a do pass on this bill as it is really needed in this state.

Rep. Carlisle : In the Human Service Budget, isn't there some money in that for adult protective services proposed in the governor's budget?

Stumiller: Yes.

Rep. Carlisle: Wouldn't that encompass the same thing. Response was that he could not answer the question.

Rep. Timm: Any other questions? Any other testimony in support of HB1388? Any opposition to HB1388? Hearing on HB1388 was closed.

End Hearing on HB1388.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB1388A**

House Appropriations Committee

☐ Conference Committee

Hearing Date **February 14, 2001**

Tape Number	Side A	Side B	Meter #
1		x	4900 - 6214
2	x		0
Committee Clerk Signature <i>L. F. Danhe</i>			

Minutes:

HOUSE APPROPRIATIONS COMMITTEE ACTION ON HB1388A.

Rep. Timm: Lets do action on HB1388. The guardian bill.

Rep. Gulleson: I would move a DO PASS. Seconded by Rep. Aarsvold.

Rep. Timm: There was testimony to the fact that the Attorney General thought he had money in his budget to do this. Rep. Byerly said that he did not. So were going to thrust a program upon him that he does not have money for. I guess I really don't understand the bill on why we have to pay a relative to take care of a family member.

Rep. Gulleson: I think there might be some misunderstanding about that, I don't believe that the intent is of setting up standards and practices is be going to be directed necessarily at relatives and non- relatives. This simply outlines what the practice is regarding issues guardianship and it gives everybody, including attorneys, which I think is the number one group that is appointed as guardians. Rep. Gulleson went on to explain who is all appointed to guardianship roles.

Rep. Byerly: The only problem I have got with this bill other than the money, is the fact that I'm afraid what this is going to lead to is obviously not next session, but at some point in time were going to get to the point where in order to be a guardian your going to have to be licensed by somebody, even if it is your own family member that your being a guardian for. You know that's the way that we seem to go around here, is first we start off adopting some sort of standard and then we start applying it to the professionals. I have no problem with that, but then we get a bill in the session that says that because we have one case in where ever, we have got to have all of these family members that will have to go through some sort of training before they can take on those duties and I that's my biggest concern with starting down the slope.

Rep. Glassheim: I have faith that Rep. Byerly will stop us on the slope where we get to be unreasonable or irrational or interfering with obvious common sense family rights. It was funny that you all laughed about my potentially being a guardian because I'm potentially going to be a guardian, some 85 year old woman in our synagogue has a an adult retarded child and no other family and she has asked me if I would be a guardian. I would find it good to have standards adopted to know exactly what I'm supposed to be doing , there will be decisions to be made about medical care, significant assets, housing, and other personal matters, and it would be nice to know the parameters and the guidance of what it is that I have a right to do as guardian and how to protect the best interests of the individual who has been placed in your care.

Rep. Aarsvold: It just seems to me that this is the ultimate property right that there is provision in the law so that when you no longer become competent and able to manage your own affairs and your own property that somebody will look after that in your best interest, and its just that simple. There is nothing that I have been made aware of that precludes the family from exercising that family obligation as it was pointed out earlier.

Rep. Timm: One of the things that were supposed to look at down here is the money aspect and if the Attorney General doesn't have the money. That's what were supposed to be looking at and not debating the merits of the bill itself, and that has already been debated in the Human Services Committee.

Rep. Gulleason: Just in response to that. The national standards have been established so it seems to me, not that difficult to go through and look at them and determine which ones would represent North Dakota.

Rep. Byerly: Since guardians are appointed by a court, I see no reason why the court could not require that document right now to be required reading by anybody that wants to be appointed a guardian. There is absolutely nothing that would stop a judge from doing that and the judge has the ultimate oversight over whether the guardian is handling the money correctly.

Rep. Timm: I remember having to make out reports every year and file them with the clerk of court and I did get some kind of instructions to do all of that. I had to tell the courts what I was doing with the money and other issues. Any other discussion?

Rep. Glassholm: I'm not sure how this works, every time we pass a law a lot of those laws get codified in rules which then the committee supervisors can reverse. Do we get a fiscal note on the cost of making a rule based on every law we pass? I don't really believe, agencies do there job and I know they have staff to do those jobs, and every time we pass a law its going to cost an agency something.

Rep. Timm: Apparently somebody requested the fiscal note, and this may be a bill that there trying to kill with a fiscal note.

Rep. Monson: I agree with Rep. Glassholm were doing it all the time with every bill that we pass so the issue to me is not that this is fiscal note so much, and that is what were supposed to

be looking at, but I agree with Rep. Byerly that the judge should be looking at this, why do we have to go through this step at all.

Rep. Gulleeson: What would make it required reading if we didn't have any standards and practices outlined in North Dakota law.

Rep. Skarphol: Judges deliver edicts all the time, and they can tell you whatever they want to tell you as far as required reading or anything else.

Rep. Gulleeson: That's true, but there wouldn't be the same standard across North Dakota, you might get one judge to do it and the others may not.

Rep. Monson: I don't think there should be a standard for every certain one. It doesn't fit every single case.

Rep. Timm: Any other discussion? The motion is for a DO PASS on HB1388. We will call the roll for a DO PASS. Roll call vote was taken. (5)YES (8) NO (8) absent and not voting, Motion fails.

Rep. Glasshelm: I would like to try a motion to send to the floor with no recommendation. There is not a appropriation attached to this bill. Motion was accepted by the Chairman.

Rep. Timm: A motion has been made to send to the floor without recommendation. Seconded by Rep. Gulleeson.

Rep. Byerly: I would move a substitute motion to DO NOT PASS. Seconded by Rep. Carlisle.

Rep. Timm: A substitute motion has been called for on a do not pass. Any discussion? Roll Call vote will be taken for a DO NOT PASS. (8) YES (6) NO (7) absent and not voting. Motion passes. Rep. Carlisle will carry the bill to the floor.

End committee action on HB1388A

Date: 2/14/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1388A

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS (MOTION FAILED)

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman		✓			
Wald - Vice Chairman					
Rep - Aarsvold	✓		Rep - Koppelman		✓
Rep - Boehm		✓	Rep - Martinson		✓
Rep - Byerly		✓	Rep - Monson		✓
Rep - Carlisle		✓	Rep - Skarphol		✓
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim	✓		Rep - Thoreson		✓
Rep - Gulleon	✓		Rep - Warner		
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) 5 No 8

Absent 8

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/14/01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1388A

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Byerly Seconded By CARLISLE

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman					
Rep - Aarsvold		✓	Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson		✓
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim		✓	Rep - Thoreson	✓	
Rep - Gulleeson		✓	Rep - Warner		
Rep - Huether		✓	Rep - Wentz		✓
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) 8 No 6

Absent 7

Floor Assignment CARLISLE

If the vote is on an amendment, briefly indicate intent:

KOPPELMAU
CHANGED VOTE
from NO to YES

THIS IS
CONFIRMED

REPORT OF STANDING COMMITTEE (410)
February 14, 2001 1:33 p.m.

Module No: HR-27-3362
Carrier: Carlisle
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1388, as engrossed: Appropriations Committee (Rep. Timm, Chairman) recommends
DO NOT PASS (8 YEAS, 6 NAYS, 7 ABSENT AND NOT VOTING). Engrossed
HB 1388 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

HB 1388

House Human Services Committee

Testimony on: HB 1388

Provided by: Paul Griffin, Immediate Past President

Guardianship Association of North Dakota

January 29, 2001

Madame Chair, Committee Members:

Good afternoon! My name is Paul Griffin, I am the Executive Director of Catholic Family Service, the immediate past president (having served 3 years) of the Guardianship Association of North Dakota and previously the supervisor of the Guardianship Division of Catholic Family Service, a position I held for thirteen years. It is with this background, but in my capacity as a concerned citizen of the state of North Dakota that I take this opportunity to address your committee regarding HB1388. With your permission, I would like to provide some historical background as a basis for my testimony and support of HB1388.

North Dakota is clearly facing a growing crisis.....it is the crisis of the unmet guardianship needs of the most vulnerable of our citizens.

These unmet needs have been well documented by past surveys and studies including *A Comprehensive Study of Guardianship Services in North Dakota* prepared for the North Dakota Guardianship Coalition by *Karl Conrad & Associates* submitted July 1, 1996. These efforts have objectively identified the scope of the current problem and a pattern of circumstances and demographics that establish guardianship as an increasing problem in North Dakota, now and for the foreseeable future.

Advances in medical care and other innovations have extended life expectancy. The expansion of the services available to support people with handicaps and disabilities and our ever increasing dedication to maintain individuals in the least restrictive placement possible have placed and kept many more

people in the mainstream of our society.

But these successes have created new concerns and problems that expose the very people whom they benefit to less positive possibilities....abuse, neglect, exploitation and the danger that they may not received needed medical and other services.

The ever increasing elderly population of our state, the economic factors and job pressures forcing families off the farms and out of the rural areas and communities and other circumstances have dramatically depleted the "traditional guardian pool." There are fewer and fewer family members available and willing to assume the protective responsibilities of their parents, sibling and grandparents

Requests for guardianship assistance are widespread and diverse....from nursing homes to county social service agencies, hospitals to group homes, states attorneys to Protection & Advocacy, Legal Assistance to pastors and ministers.

A nursing home administrator seeks a guardian to serve an elderly individuals who must have a critical decision made regarding code level and end of life questions.

A hospital social worker needs a guardian for a patient who requires major surgery but is not able to provide informed consent.

A county social service worker is trying to access needed services to maintain an at-risk individual in her own home but is not able to understand all the information she is being provided.

An advocate has serious concerns about a situation where an elderly person is being financially exploited by his relatives.

A county social service director has identified a case where a long time county resident can no longer care for herself and must be placed in a protective situation.

A mental health worker needs a guardian for a client with manic depression to provide structure and secure appropriate treatment.

These calls for guardianship service are made on an almost daily basis, but the sad truth is that the guardianship services currently available to members of the adult population are limited, under funded, suspect in terms of quality or simply non-existent. Efforts of public administrators, private guardianship services and corporate guardians cannot adequately fill the void... and increasing numbers of elderly, mentally ill and developmentally disabled individuals are more frequently exposed to abuse, neglect and other dangers.

Over the past two decades uncouneted attempts have been made to focus attention to this problem and to mobilize an effective long-term response. There have been guardianship study groups, guardianship focus groups, guardianship task forces and individuals who have worked diligently to alert the public and elected officials to the problem.

These efforts have included the Department of Human Services, the current and previous state administrations, the legislature through specific committees and individuals members, county social service boards and directors, district court judges, states attorneys and others. There have been studies, surveys, meetings and media attention.

Funding has been pursued through numerous grant applications, solicitation of donations, expanded requests to community United Way campaigns, fund raising projects, constant emphasis on responsible fiscal management, exploration of alternative governmental support (Title XIX), review and research of options for funding utilized by other similar programs on a national basis, the use of subsidies and contributions from churches and religious organizations and many other approaches.

The "bottom line" is that every one agrees that there is a tremendous need.....there is an increasing number of vulnerable people in our state who need the protection of a guardian, but there are fewer and fewer options and alternative available to meet the needs.

The Guardianship Association of North Dakota has grown-up and out of these efforts. It is a coalition of concerned citizens, human service agencies, service providers, private corporations and others who have jointed together to positively impact this area of service in our state. Many of our members are veterans of the efforts of the past years to try to bring services to the 'neediest of the needy." GAND has worked cooperatively and positively with any and all entities to make quality guardianship services available to those who need them, especially those who currently cannot access or pay for them. The bill before you today represent a part of the evolution of those activities.

Attached to my testimony is a copy of the Guardianship Associations Critical Needs List. It continues to be my belief that a comprehensive approach to meet the guardianship needs of the people of North Dakota must be developed and implemented. As we work to establish and expand available service, encourage volunteer participation and provide training to those who serve as guardians we MUST be certain that those guardians meet certain basic standards of practice and behavior..... that they offer to their wards quality, responsible services..... and that they be accountable for their actions. HB1388 is intended to accomplish this by utilizing as a guide the standards of practice established by the National Guardianship Association and its members. Adopting this bill will go a long way in the efforts to make certain that those responsible for making decisions for another really do provide quality, professional services.

In closing I would like to express my appreciation to the members of this committce and the bill sponsors. In you role as legislators you have assumed some major responsibilities. My testimony is

offered to draw your attention to the problem and seek your assistance in its solution. Be assured that there are many concerned people across our state, serving in a variety of roles who are ready to work with you to address this very serious and growing need.

Respectfully Submitted:

A handwritten signature in dark ink, appearing to read "P. T. Griffin", with a large, sweeping initial "P" and a checkmark-like flourish at the end.

Paul T. Griffin

1418 - 17th Street South

Fargo, ND 58103

CONT

NEXT FICHE

From a Focus Group Report to the American Association of Retired Persons titled, "What are the Effects of Managed Care on Adult Guardianship Agencies and Clients?" by Erica F. Wood, Commission on Legal Problems of the Elderly, American Bar Association

What is Guardianship:

"Guardianship is 'a critical last line of protection for ailing elderly' and persons with mental disabilities." It is "A legal tool for the protection of vulnerable population....." It is a "judicially created relationship in which a court gives one person (the guardian) the power and the duty to make personal and/or property decision for another (the incapacitated person). The appointment of a guardian occurs when a judge decides an individual lack capacity to make decision on his/her own behalf. The guardian steps into the shoes of the incapacitated person to make decision and see that they are carried out. Every day guardians make critical decision about the medical treatment, care, placement, finances and lifestyle of incapacitated person that judges have placed under their protection. A guardian acts as a 'fiduciary,' meaning the guardian owes the individual a special duty of care and accountability." Guardianships should be entered into only as a last resort and with the intent that they be as limited as possible. In this way allowing the incapacitate person to retain the highest level of independence possible.

G.A.N.D.

The Guardianship Association of North Dakota

2637 South University Drive, Fargo, ND 58103-5736

Phone: (701) 236-4467

The Guardianship Association of North Dakota 2000 -2001 Critical Issues List

1. *A clearly identified need for the provision of guardianship services to the vulnerable in our state exists. This is supported by statistical information and is caused by well recognized social and economic factors. Although the needs of most of our citizens with developmental disabilities are being met, services are not readily available to people who are elderly, have a mental illness or have suffered a traumatic brain injury. North Dakota needs to expand the availability of guardianship services to these people. The budgetary and administrative responsibilities for these services may be most appropriately placed with the Department of Human Services, however, other options should also be considered.*
2. *The relationship of a guardian to a vulnerable person (ward) is very intense with a guardian having the authority to make critical decisions for their ward. The appointing courts monitor the activities and services provided by a guardian to the extent that they are able, however, North Dakota currently has no established quality or performance standards and no consistent means for ensuring the protection of vulnerable individuals in their relationship with their guardian. Quality and performance standards and a method to monitor the services and activities of all guardians need to be developed and implemented.*
3. *North Dakota has an exemplary statute (NDCC 30-1-28) that deals with the process for the appointment of a guardian for an incapacitated person. In addition, the Legislature established NDCC 23-12-13 which provides a priority of persons who may be authorized to provide informed consent for health care for incapacitated persons. While the intent of NDCC 23-12-13 is laudable, it assigns critical decision making authority to surrogates without the same process and protections identified in the guardianship statute. This law should be revisited and these concerns addressed.*

million bushels of dent of the North Dakota Grain Dealers Association
being held under storage conditions Grain dealers and farmers in

elevators in South Dakota, 10 of which are in the northeastern part of the state.

rocky start," Cope said. "If we get all the cars we've got coming, we'll be able to make it through."

Ex-Cass public administrator charged with theft

By Jack Sullivan
The Forum

Cass County's former public administrator - a woman who once was legal guardian of nearly four dozen incapacitated adults - was charged Monday with stealing from six of her wards.

Marilyn Hawkinson, 62, 1721 6th Ave. S., Fargo, also is charged in Cass County District Court with lying under oath during a hearing called to determine whether she should continue as conservator for a nursing home resident.

The single theft charge filed Monday accuses Hawkinson of:

- ▶ Taking \$2,117 from the estate of Ralph "Shorty" Olson in November 1995 when she served as the estate's personal representative.

- ▶ Overpaying her mother, Florence Benz, for spending time with ward Lucille Smith before Smith's death in June 1996.

- ▶ Taking more than her share of money raised at a June 1996 public sale of property belonging to ward Benora Tuttle.

- ▶ Using money belonging to another client, Oswald Olstad, to buy an antique music stand at the Tuttle sale for less than its true value and then keeping it.

- ▶ Taking coin and stamp collections from ward Alice Hobbs.

- ▶ Taking personal belongings from ward Bernard Moellenhoff after his death last December.

The perjury charge accuses Hawkinson, while being questioned about a debt owed to Elim

Nursing Home of Fargo and money owed to her ward, of falsely saying that she never received a Social Security check, when in fact she had received and deposited a replacement for the check.

The two charges are class C felonies, which carry maximum sentences of five years in prison.

Lawyer Bruce Quick represents Hawkinson and declined to comment on the charges.

He said Hawkinson was out of town and he had not yet received a summons for her to appear in court to face the allegations.

Hawkinson served two four-year terms as Cass County's public administrator. The county stopped funding the position in 1995 after North Dakota consolidated the county court system into state judicial districts.

She wasn't reappointed to the position at the end of 1996 because of the lack of funds.

In 1997, Hawkinson was reappointed - as a private individual, not under a county contract - to be guardian of 34 of 44 people who were her wards while she was public administrator.

According to the Cass County clerk of court's office, Hawkinson remained the named guardian in 27 open cases on July 13.

She has been under suspicion since at least December 1997, when Cass County investigators and North Dakota Bureau of Criminal Investigation agents first searched her residence for records.

Agents searched her home again in February.

Moorhead PSC mulls rate hikes

Moorhead residents will pay more for water and electricity next year under a new rate structure being considered by the

Also, one of Moorhead's power suppliers is raising its rates, which will increase the city's power cost by 20 percent in 1999.



Bruce Grumby / The Forum

has a huge pile of bagged leaves stacked on the

ig site

bordered by a fence in. Historical records for Swenson and Picha showings of French ion compounds in northwest from the y show small, rectangular located near a

uding a graves reg- umption Church in 213 burials after records for earlier oyed in a fire at ch in what is

a historian from

Justice drops fraud charges against Basin

Bismarck, N.D. (AP)

The Justice Department has dropped fraud claims against Basin Electric Power Cooperative, but a former company auditor may continue to pursue them privately.

Bob McPhail, Basin Electric's general manager and chief executive officer, said Monday the co-op has been vindicated.

"We're happy that the Justice Department finally recognizes what we've been saying all along - there was no fraud, not now, not ever," he said.

But former Basin auditor Robert Norbeck said he still believes there was fraud, and he intends to prove

Defeat of guardianship bills leaves problems unaddressed

It was like three legs of a chair collapsing, Paul Griffin says of three guardianship bills lawmakers defeated.

"We were looking at a complete platform," said the supervisor of guardianship services for Catholic Family Services, which provides guardianship services for people with mental retardation and related disabilities.

"This legislation grew out of a task force. The Department of Human Services asked us to identify the most urgent problems and come up with suggestions for addressing them. Now, nothing will be done about them."

The bills that failed were:

- ♦ **HB1299**, which provided for states attorneys to file guardianships for indigents.

- ♦ **HB1301**, which would have established state guardianship programs for senior citizens and for people with mental illness similar to the one for people with developmental disabilities; and

- ♦ **HB1302**, which would have funded a Partners in Guardianship program.

"Partners in Guardianship would recruit, screen and train individual guardians," Griffin explained. "We don't want to see a huge corporate entity created."

Catholic Family Services provides guardianship services to 355 people. Corporate guardians must be licensed or certified and are held to tighter standards than individual guardians, Griffin said.

"But they may have as many as 60 clients spread all over a huge territory. It's not like you live around the corner and can drop in on them frequently."

That's one advantage of individual guardians, Griffin said. Another is that it becomes a more personal, involved relationship.

But the legal process alone costs \$500 to \$3,000. And many individuals or family

members who would be willing to become guardians can't afford it.

"Another problem is that they may not be trained or know all the ramifications," Griffin added. "We could have made that training available. Courts could have required it and we could have provided it."

He said Catholic Family Services still hopes to provide such a service, but not on the level state funding would have allowed.

A guardian's responsibilities can vary widely, depending on the needs and abilities of the ward, Griffin said.

"In some cases, the guardian must make every decision affecting the ward — financial, legal, medical, residential, vocational. In others the responsibility may be much more limited."

Another guardianship issue is monitoring and follow-up after a guardian has been appointed.

"Standards are all over the place. The quality can be excellent in one county and hardly there in another. There isn't much monitoring of different levels of accountability."

Griffin said the three bills failed largely due to funding requirements. But lawmakers also may have been waiting to see what happens with an interim study — the fourth leg of that collapsed chair.

Now he's keeping a close eye on **HCR3016**, which provides for an interim study of guardianship issues.

"We want to make sure that it gets prioritized high and actually does get studied."

The Legislative Council will meet in May to review an array of study resolutions and decide which to peruse. Other resolutions call for studies on special education funding and funding for developmental disabilities.

GUARDIANSHIP IN NORTH DAKOTA

The Problem:

An ever increasing gap is developing between the number of vulnerable individuals who need guardianship services and those individuals and entities available and appropriate to serve them. This critical imbalance is caused by a variety of reasons including the number of people leaving our state, the break-up of families, changes in traditional roles and values, improved health care, the emphasis on community based options and other demographics. These "at-risk individuals" are not restricted to any one segment of our population, but come from all population groups (elderly, DD, TBI, SMI). The most recent and comprehensive study of guardianship (completed in July 1996) provides a picture of the crisis and the unmet needs.

Needed Now:

The tremendous fiscal demands of any effort to meet these needs makes it unrealistic to expect that any one governmental entity can or will shoulder the responsibility. Additionally, it is not appropriate to single out one group and serve them while leaving the others unserved. Therefore, it is imperative that a broad, comprehensive and cooperative approach be undertaken that utilizes the skills, expertise and resources of all of the various shareholders to assess the problem and develop a unified and effective solution.

A Possible Solution:

A multi-faceted, three-pronged approach may offer the best opportunity to meet the expanding needs by building upon the successful components of already proven services and using available resources. *This approach supports a sound guardianship philosophy and minimizes the financial impact.*

1. The currently available, traditional guardianship options meet a variety of needs and should NOT be abandoned. These options include family members, friends and public administrators. However, a system to train and support these providers must be developed to improve the overall quality of their service. This would include the development of guardianship standards.
2. Corporate guardianship should be expanded to ensure the availability of competent professional services to all cases where guardianship is deemed necessary by the courts. A corporate guardian would be the "guardian of last resort" and would serve only when other options are not available or appropriate. This would provide a "safety net" without building a massive corporate or public guardianship caseload.
3. A statewide Partners in Guardianship (PiG) program should be developed utilizing its' proven approach to recruit, screen and train volunteers to serve as guardians. These individuals would continue to require and receive on going training, technical assistance and support as they perform their duties. PiG could also provide a training alternative available to all the courts as a requirement for anyone appointed as a guardian.

The corporate guardianship entity would be responsible for system coordination, development and provision of the Partners program as well as the support and technical assistance services needed by the other existing components.

Prepared by: Paul T. Griffin, Supervisor - Guardianship Services Division
Catholic Family Service
February 9, 1998

**TESTIMONY OF MELVIN L. WEBSTER
IN SUPPORT OF HOUSE BILL 1388
BEFORE THE HUMAN SERVICES COMMITTEE**

My name is Melvin Webster. I am an attorney at law in private practice in Bismarck, North Dakota. My practice includes guardianship and conservatorship. I appear before you on my own behalf and urge you to support this bill.

The general powers and duties of a guardian in North Dakota are listed in Section 30.1-28-12 of the North Dakota Century Code. They are extremely sketchy and do not provide much guidance for guardians other than a limitation on the guardian's authority to authorize certain procedures without court consent, such as abortion, sterilization, and experimental treatment.

I am also a member of the National Guardianship Association. The standards that have been developed by the National Guardianship Association are generally accepted. Although it may be necessary for the attorney general to modify the standards in some instances, they provide an excellent guide for guardians. The adoption of guardianship standards is needed to provide families' volunteer guardians and corporate and public guardians with guidelines regarding the services they provide. The development and implementation of guardianship standards would also make it easier to evaluate guardianship services.

I urge you to vote "Do Pass" in support of House Bill 1388.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: House Human Services Committee
From: Christopher Dodson, Executive Director
Subject: House Bill 1388 (Standards of Practice for Guardians)
Date: January 29, 2001

The North Dakota Catholic Conference supports House Bill 1388.

Guardians provide an essential service in our society. They help ensure that every person, no matter how vulnerable, is treated with dignity and respect.

House Bill 1388 will help further this important work by guaranteeing that guardians abide by the standards of practice adopted by the National Guardianship Association. No one ever has the right to take advantage of our most vulnerable citizens. Implementation of a professional standard of conduct will help ensure that this does not happen.

We urge a **Do Pass** recommendation on House Bill 1388.

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