

# MICROFILM DIVIDER

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



ROLL NUMBER
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DESCRIPTION

2329

2001 SENATE HUMAN SERVICES

SB 2329

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2329

Senate Human Services Committee

Conference Committee

Hearing Date February 6, 2001

Tape Number	Side A	Side B	Meter #
1		X	51.2
2	X		
February 7, 2001 2		X	38.6
Committee Clerk Signature <i>Paul Koldziejchuk</i>			

Minutes:

The hearing was opened on SB 2329.

SENATOR FISCHER, sponsor of the bill, introduced the bill on guardianship services. This bill also unifies guardianship.

MEL WEBSTER, lawyer, presented testimony on behalf of BILL CHAUSSEE in support of bill. (Written testimony) The most needed guardianship for elderly and mentally ill.

DONNA BYZEWSKI, Board member of the Guardianship Association of ND, supports bill.

(Written testimony) Presented written testimony from ANDREA BOYEA. SENATOR

MATHERN: Is there a training procedure? MS. BYZEWSKI: The CFS's program is being used.

KATHLEEN SCHANER, citizen, supports bill. Guardianship legal process is very extensive. There is a gap when finding a guardian. What level of care do you want to provide? Gave example of her own family.

Page 2  
Senate Human Services Committee  
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CHRISTOPHER DOBSON, Family Catholic Services, supports bill.

CAROL WATREL, guardian, supports bill. I am trained to be a guardian; we are actually saving the state money. The program needs to be continued; need the feeling of support from family and community.

CORINNE HOFFMAN, Protection and Advocacy, supports bill. The Department is often called in to cases - families unable to serve as a guardian or it is inappropriate to serve. It is necessary to find a third party; it is an ongoing problem.

PAUL GRIFFIN, Guardianship Association of ND, supports bill. (Written testimony)

SENATOR MATHERN: How would section 3 be spent? MR. GRIFFIN: Better trained guardians; a little administrative, and to find, screen, train, match people to meet needs of individuals.

LARRY BERNHARD, Co. Soc. Svc. Dirs. Assoc., supports bill. County directors need guardianship.

LARRY WAGNER, AARP, supports bill. This year we have identified 5 priorities, one of which is to insure guardianship. Brochures were distributed.

The hearing on SB 2329.

February 7, 2001, Tape 2, Side B, Meter 38.5

Discussion resumed on SB 2329. SENATOR FISCHER moved a DO PASS and REREFER to Appropriations. SENATOR KILZER seconded the motion. Roll call vote carried 6-0.

SENATOR FISCHER will carry the bill.

Date: 2/7/01  
Roll Call Vote #: ~~2329~~ 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2329

Senate HUMAN SERVICES Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass & Refer to App.

Motion Made By Sen Fischer Seconded By Sen Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Fischer

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

**REPORT OF STANDING COMMITTEE (410)**  
February 8, 2001 3:19 p.m.

Module No: SR-23-2784  
Carrier: Fischer  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2329: Human Services Committee (Sen. Lee, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2329 was rereferred to the Appropriations Committee.**

2001 SENATE APPROPRIATIONS

SB 2329

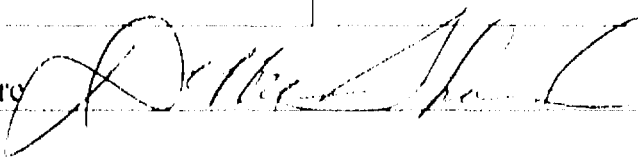
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2329

Senate Appropriations Committee

Conference Committee

Hearing Date February 13, 2001

Tape Number	Side A	Side B	Meter #
Tape #1		x	26.0-54.0
Tape #2	x		0.0-3.1
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on SB 2329.

Senator Fisher, District 46, gave support to this bill and the appropriation. Section 2 of the bill states the appropriation needed for other guardianship services which amounts to \$3.20 per day per person.

Senator Solberg: In Section 2 the \$50,000 what is this amount for regarding the volunteer guardianship.

Senator Fisher: For training.

Paul Griffin, Executive Director of Catholic Family Service, (testimony attached) addressed the fiscal issues of the bill.

Senator Bowman: How are you currently handling this program.

Paul Griffin: The program depends on the changing demographics, longer age and the problem with family guardians leaving the state.



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Senate Appropriations Committee

Bill/Resolution Number SB 2329

Hearing Date February 13, 2001

Bill Chaussee, President of the Guardianship Association of North Dakota, testified (testimony attached) in support of the bill stating this is a must appropriation to support low income adults.

Senator Nething: In Section 2, how do you coordinate the \$50,000 appropriation?

Bill Chaussee: It is a volunteer program throughout the state. Cases involve the mentally ill, elderly people in difficult cases.

Senator Schobinger: In Section 3, \$440,000, services to non development disabled, explain this.

Bill Chaussee: This is mainly for the elderly with dementia.

Senator Bowman: Is any of this money used by Human Services?

Bill Chaussee: None that I am aware of but could be explored over a period of time; very limited at this time.

Rodger Wetzel, Director of Community Health and Eldercare at St. Alexius, appeared in support of the bill (testimony attached), stating the appropriation is very important for this program.

Norm Stuhmiller, AARP, spoke in favor of the bill and that this training is needed as the volunteers will be there and recommend a do pass.

Senator Nething: AARP has a lot of money; do they provide any social services to these members?

Norm Stuhmiller: Very true they have money and I will check into this.

Senator Tallackson: Are volunteers paid for guardianship?

Norm Stuhmiller: No this money is for training the volunteers so that they can be guardians.

Senator Andrist: \$50,000 for training, \$440,000 fees and services, provide fee service and what pay goes to guardian?

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Senate Appropriations Committee

Bill/Resolution Number SB 2329

Hearing Date February 13, 2001

Paul Griffin: This is an issue as no services provide the guardianship approach. We need to establish standards practice to provide the training; recruit quality service and there are no resources to address this issue. Catholic Family Service covers around 72% to this program

Senator Andrist: Guardianship has been ongoing for 100 years; can you find volunteers for this training?

Paul Griffin: It was traditional with families until recently. Complication with demographics and families leaving the state. Volunteers are out there but need training and there are a lot willing to serve. Courts feel this is an ongoing need. Training is crucial for special need services and a vulnerable group of people.

With no opposition the hearing was closed on SB 2329. Tape #2, Side A, meter 3.1

February 16, 2001 Full Committee Action (Tape #1, Side B, Meter No. 30.8-36.5)

Senator Nething reopened the hearing on SB2329. Discussion. Senator Solberg moved a DO NOT PASS, seconded by Senator Holmberg. No discussion; call for the Roll Call Vote: 14 yes; 0 no; 0 absent and not voting. Senator Solberg accepted the floor assignment.

Date: 2-16-01

Roll Call Vote #: \_\_\_\_\_

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

Senate Appropriations Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not pass

Motion Made By Senator Solberg Seconded By Senator Holmberg

Senators	Yes	No	Senators	Yes	No
Dave Nothing, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Senator Solberg

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

REPORT OF STANDING COMMITTEE (410)  
February 16, 2001 11:50 a.m.

Module No: SR-29-3648  
Carrier: Solberg  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2329: Appropriations Committee (Sen. Nething, Chairman)** recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2329 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2329

## BECOMING A MEMBER

Membership is available on an individual, family\*, or agency\* basis. . Membership applications and dues should be sent to: Guardianship Association of North Dakota, P.O. Box 1693, Bismarck, ND 58502.

### **COST OF MEMBERSHIPS:**

Individual: \$20  
Family: \$25 includes 2 designees \*\*  
Agency: \$30 includes 1 designee \*\*

*Dues are be effective on an annual basis and memberships expire annually on August 31<sup>st</sup>.*

*\*Each Membership carries one vote, no additional votes will be granted under the Agency or Family memberships.*

*\*\* an additional \$10 charge is required for each additional Family or Agency designee.*

The idea of an association of concerned people who shared common concerns about the vulnerable adult population and guardianship began in the mid '80's and GAND held it's first annual conference in 1997.

Today GAND works to educate others regarding issues affecting the vulnerable adult and surrogate decision making. It continues to work to identify and pass appropriate legislation and to ensure that qualified guardians are available to provide quality service when needed.

GAND is a strong voice that helps to represent the many unmet needs of people too vulnerable to speak for themselves.

**Guardianship Association of North Dakota  
P.O. Box 1693  
Bismarck, ND 58502**

## **GUARDIANSHIP ASSOCIATION OF NORTH DAKOTA**

### *GAND's MISSION*

*The Guardianship Association of North Dakota is a non-profit organization of professionals, families and concerned individuals committed to supporting guardians and other surrogate decision makers in enhancing the lives of the people they serve.*

**BECOME A GAND MEMBER TODAY!! YOU CAN MAKE A DIFFERENCE!!**

**CONT**

**NEXT FICHE**

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The Guardianship Association of North Dakota is a non-profit organization whose purpose is:

- to develop resources, services & educational programs to support surrogate decision makers.
  - to educate the public and professionals
  - to develop a network for the exchange of information
  - to encourage the development of legislation consistent with our mission
  - to promote surrogate decision making alternatives
  - to establish, promote & maintain the highest ethical and quality standards
- 
- 

#### MEMBERSHIP BENEFITS

Some benefits of membership include:

- ★ Education and training forums, conferences and materials on surrogate decision-making alternatives, court evaluation, future planning and legislative updates.
  - ★ Opportunities to participate in leadership roles and to serve on Association committees.
  - ★ A newsletter which provides information on legislation, state and regional activities, issues dealing with guardianship and provides discussions about current issues.
  - ★ A membership directory which enables members to communicate and network with each other.
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To join the Guardianship Association of North Dakota, return this portion with your check for the appropriate membership fee to:

**Guardianship Association of North Dakota**  
P.O. Box 1693  
Bismarck, ND 58502

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
ORGANIZATION: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
TELEPHONE: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
E MAIL ADDRESS \_\_\_\_\_

You want your name published on the Membership Roster:  Yes  No

Enclosed:  \$20 Individual  \$25 Family  \$30 Agency  \$10 each additional designee

Names of additional designees: \_\_\_\_\_

For more information call: (701) 235-4457 in Fargo or: (701) 222-6600 in Bismarck

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SENATE BILL NO. 2329  
GUARDIANSHIP APPROPRIATION BILL  
TESTIMONY BY BILL CHAUSSEE, PRESIDENT  
GUARDIANSHIP ASSOCIATION OF NORTH DAKOTA

Mr./Madam Chairman and Committee Members:

My name is Bill Chaussee. I am the President of the Guardianship Association of North Dakota, a non-profit corporation, whose mission is to establish training, standards, and a code of ethics for guardians and other fiduciaries.

I am, also, the Administrator of Guardian and Protective Services, Inc., a non-profit corporation that provides guardianship and protective arrangements for vulnerable adults.

Some of our most vulnerable low-income citizens have no family members or capable friends living nearby to assist with their daily needs: to help them with home and medical services, to help apply for programs that will affect their financial well-being, to provide protection from physical harm or financial exploitation. Many, who have family in North Dakota, have needs that their families cannot meet.

Due to lack of funding it is difficult and at times impossible to meet their needs through unpaid volunteers, public administrators, or corporate guardians. These individuals in need are frail elderly, severely mentally ill, or traumatic brain injured and come from all walks of life. They may have been teachers, nurses, farmers, or business people. Their needs are complex and require much time, care, and skill. They deserve help to maintain their dignity and independence.

It is imperative that a secure, stable funding mechanism be established in North Dakota to provide guardianship services for these vulnerable adults. The Guardianship Association of North Dakota supports Bill No. 2329 and requests this Committee to vote in favor of this Bill.

**Senate Human Services Committee**

Testimony on SB 2329

Provided by: Donna Byzewski

Judy Lee, Chairperson

February 6, 2001

Chairperson Lee and Members of the Committee, my name is Donna Byzewski and I am a board member of the Guardianship Association of North Dakota (G.A.N.D.) and I am supervisor of the Guardianship Division of Catholic Family Service (CFS). I would like to provide some history regarding CFS's corporate guardianship program as a way of showing why I support SB 2329.

In the 1980's, the de-institutionalization process began at the Developmental Center in Grafton as a result of the ARC lawsuit. It was found that a number of people residing at the institution needed the support and protect of a guardian. Social workers at Grafton found that a number of their residents had no family members available or willing to serve as guardian. Many who had no one to act as guardian on their behalf were extremely vulnerable. The Developmental Disabilities Division decided to meet this need by sending out a Request for Proposal for a corporate guardianship program. CFS's proposal was accepted and, in 1986, CFS began providing corporate guardianship services for people with developmental disabilities. CFS's corporate guardianship program currently serves 333 people with developmental disabilities who live across North Dakota. North Dakota is known throughout the United States for the excellent and comprehensive services it provides on behalf of people with developmental disabilities. This service system includes residential providers, work programs, congregate care homes, Developmental Disabilities Case Management system, the Developmental Center in Grafton as well as corporate guardianship services.

A combination of family members, friends, Partners in Guardianship (a volunteer program that recruits, screens and trains people from the community to be guardians) and corporate guardianship has, for the most part, effectively met the guardianship needs of people with developmental disabilities. Unfortunately, there is a growing population of vulnerable people whose guardianship needs are not met. People with severe mental illness, traumatic brain injury or vulnerable elderly persons are at risk of substantial harm because of the decisions that they are

making or decisions that they are unable to make. Often they have no one who is able to serve as guardian. If a person is indigent, there may or may not be a public administrator available to protect and support them or a family member or a Partner in Guardianship volunteer. Many vulnerable people with complex needs fall through the cracks and go without critical protective services such as guardianship. The guardianship needs of people with developmental disabilities are met but if you are a person with severe mental illness, traumatic brain injury or if you are a vulnerable elderly person, watch out because there are very few guardianship options available to you.

Corporate guardianship is an essential service that could begin to fill a major gap in the guardianship system in North Dakota for people who are disabled, at risk and vulnerable. I have worked in CFS's corporate guardianship program as a guardianship worker for the past 10 years and I have been supervisor for the past year. I know corporate guardianship and I know it works. Corporate guardianship provides expert services at an economical price. Currently, we have six full time and four part-time guardianship workers who travel to every corner of the state to serve 333 people with developmental disabilities. During our last fiscal year, guardianship workers traveled more than 90,155 miles to 37 towns and cities to visit wards and assure their safety and well being. More than 4,975 face to face visits were made and over 14,832 case contacts were made on behalf of their wards. Corporate guardianship provides 24 hour, seven days per week emergency on-call services. It is vital that guardianship workers see their wards regularly to develop a relationship so there is a thorough understanding of their needs. Our full time guardianship workers carry a caseload of 50 wards and our part time staff have a caseload of 25 wards. Even with these large caseloads, our guardianship workers know their wards well so when difficult and painful decisions need to be made, they can truly act in their ward's best interest.

Our guardianship workers are required to have an undergraduate degree in a human service field. To make decisions that are in the ward's best interest, a high level of knowledge is crucial as are the skills to analyze very complex, often life altering or life threatening, situations. Guidelines that guardianship workers follow when making decisions include an excellent guardianship law

that the legislature revised in 1990 as well as our guardianship program's comprehensive written policies and procedures.

As I stated earlier, corporate guardianship provides expert service at an economical price. There may be a concern that funding corporate guardianship is a duplication of already existing services. If, for example, the appropriate social services were in place, guardianship would not be needed. The current guardianship law provides protection against duplication of services on two levels. First, not all people with traumatic brain injury, severe mental illness or elderly people need a guardian. The guardianship law has very specific safeguards that must be followed before someone can be found to be incapacitated to the point that a guardianship is needed. It must be shown that there is no alternative resource plan available such as social services, home health, case management, that can meet the person's needs before going to the extreme measure of a guardianship. Secondly, if a guardian is needed, the law is clear regarding who has priority to serve as guardian. Corporate guardianship is seventh on the priority list. It must be shown in court why the first six guardian options are not appropriate. For example, it must be shown why the spouse of the incapacitated person cannot be guardian or the adult child or parent. A corporate guardian would only be appointed if the court found it to be the best qualified over other options and that it is in the person's best interest to have a corporate guardian.

In closing, there continues to be a growing number of vulnerable adults who are not developmentally disabled who would benefit from corporate guardianship services. CFS's corporate guardianship program has shown over the past fourteen years that corporate guardianship can be an effective and economical method of providing guardianship services to those who would otherwise go without and remain at risk. Senate Bill 2329 is an excellent step in attempting to fill the gap that currently exists in our overall guardianship system in North Dakota.

To the Legislature  
From Andrea Boyea

I am unable to come today to testify in person, so ask if my testimony may be read.

I coordinate the Partners in Guardianship program for Catholic Family Service and have done so since summer of 1998. My program recruits, screens and trains people to be guardians for incapacitated adults. Most of the people served by Partners in Guardianship guardians are elderly people with age-related incapacities or are people of any age with incapacities due to mental illness, brain injury, or substance abuse problems. A smaller number may have mental retardation or other developmental disabilities, which may or may not be related to their incapacity, but are not served by a corporate guardianship program, either because they do not fit the parameters or the programs available are over extended.

I would like to tell you first about the great need for non-family guardians that I perceive in the state of North Dakota, then about the need for training and standards, then about the costs of running a program like mine, recruiting, screening and training guardians, and the costs and limited resources for establishing guardianships. finally I would like to tell you why I think that your should pass and fund SB2329..

Most adults who need guardians are served by family members. However a growing number of adults who need guardians, especially the elderly, those with mental illness, and those with a history of substance abuse, are not or cannot be served by family member guardians. There are several reasons for this:

- Some people have no family members who are sufficiently close or even available to serve in that capacity. This is especially true of elderly people, but true of many other adults.
- Children have moved away or lost touch
- In the case of the very elderly, children are elderly themselves and in need of support services
- There are no children or close other relatives
- Disputes and other issues within the family mean that family members are unable to pursue the best interests of the incapacitated person appropriately or without serious interference
- Family issues may prevent a relative from being both a loving/supportive family member and a guardian exercising certain rights and responsibilities on the incapacitated person's behalf
- Family are, for various reasons, unable or unwilling to take on guardianship
- Sometimes available family, even if willing, are inappropriate for guardianship of the incapacitated adult because of their history (eg. exploitation, abuse, criminal behaviors), condition (mental illness, limited abilities) or personal life issues and struggles
- Sometimes personal relationship issues between the family member and the incapacitated person prevent the family member from being an effective or appropriate guardian
- Caregiving issues may require great amounts of time and attention, even causing burn- out, and cannot be complicated by the additional burden of guardianship
- The incapacitated person may have, because of their condition, burn all their bridges with family, and needs to have another person of good will to serve as guardian. This is especially true of persons with certain kinds of mental illness or substance abuse histories

Partners in Guardianship often receives eight or more calls a week inquiring about guardianship. Many of these calls are made by social workers, lawyers, or concerned relatives who are--sometimes rather desperately --looking for someone to become a guardian for an incapacitated adult. Many of the cases are very difficult ones, people with special needs of all kinds. An average month gets at least 30 calls, but we have had months with over 50. Our highest month brought us 57 calls from people looking for someone to become a guardian to an incapacitated adult. My program, with current resources, is not able to recruit, screen and train people at a rate fast enough to meet that need. Even if we were able to do so, there are not enough resources to help pay for guardianships to be created. People who need guardians are often very low income or even indigent, and cannot afford the costs. I often get calls from concerned people who have someone to become a guardian, possibly a Partners trained guardian or a friend or relative or other person connected with the incapacitated person, but who need to find funds to pay for the establishment of the guardianship. Cost involved

include a lawyer or counselor to help prepare the petition, filing fees for the petition, the costs and expenses of the investigation and three court appointees (guardian ad litem, home visitor, psychiatrist/physician, and often other costs). The lowest cost guardianship we were able to help someone put together still cost nearly \$200, and that was with pro bono petition lawyer, guardian ad litem, and physician. Most cost considerably more, between \$500 and \$1200, depending on the cost of petition, the nature of the investigation and the fees and expenses for the court appointees.

Partners in Guardianship not only recruits, screens and trains guardians who we then help match with appropriate wards, but we also train other guardians, offer technical support to guardians, and often help people concerned about guardianship know what they need to know or find resources. In addition we train service providers from all fields who work with vulnerable adults in matters pertaining to guardianship, including how to work with guardians, consent issues, ethics and when a guardianship is needed, as well as in the alternatives to guardianship. All this takes time and money. Partners has been totally dependent on grants and donations. Most grants are one time only grants, intended to give a program a boost in development, but not renewable. The amounts available from other grants are reduced over time, partly because there is less money or more program requesting from those sources but more often because each funding source wants to see other sources besides itself developed by the program. That may work in many programs in promoting diversified funding, but it works very poorly for programs having to do with guardianship. There are no foundations out there who readily or ever consider funding programs that do or work with guardianships. Finally, certain sources from the past no longer fund outside programs, so have become a non-source. As our program expands and effectively needs more funds, the resources diminish, and just about the time the viability of the program and the willingness of others to count on it for services matures, the program has to cut back or disappear because of lack of funding. Recruiting volunteers to become guardians takes a lot of time and attention. When programs like Partners are constantly having to develop funding, the time that takes is removed from time needed for finding, screening, training and placing the volunteer guardians. Partners is a statewide program. During 2000, Partners has been active in all the major cities and in 64 other communities. Partners provides a valuable resource to the state, both as a trainer and provider of guardians and as a resource for information, technical assistance for guardians, and referral center pertaining to all aspects of guardianship.

Partners in Guardianship asks each potential guardian who has passed our training and screening to take on only one ward. However, the majority of Partners guardians have taken on two, partly because of the shortage of guardians and the goodness of their heart, but also because there are rewards in doing a good job as a guardian. Two Partners guardians have taken on three wards, and two others are in process of incorporating themselves planning to take on six to ten wards. In nearly all these cases, the work of guardianship is done *pro bono*, since there are no resources to pay. In some cases, a 5% equivalency to SSI is provided through Medicaid without coming from the income of the ward. Very low income people who do not have SSI do not have that resource, however, and a 5% payment for guardianship, in addition to expenses that have to be paid, would mean they have no discretionary funds at all. If a person does have sufficient income, the guardian can claim 5% or a stipend, as approved by the judge, for guardianship services. Where income is larger, a fee schedule may be approved by the judge. Generally Partners guardians do not serve wards who are well-off, since a number of agencies (banks, lawyers, trust firms) offer guardianships on a fee or percentage basis to people with money and property. In fact, nearly all Partners guardians serve as volunteer guardians, and the people they serve do not have the resources to pay for their guardian services. Partners in Guardianship, you might say, is a service of last resort for "the measure of last resort" (guardianship). We find guardians for people who might otherwise have no one to serve. As noted above, this population is growing in North Dakota.

I think you should fund this bill for several reasons. First, the population of people needing guardian in North Dakota is growing, partly because the number of vulnerable elderly is growing, but also because many of the traditional protections such as families and/or close friends or neighbors who simply took care of people's affairs and decisions are more stressed or limited or unavailable, and partly because more people live on their own. The resources for families to simply take on the responsibilities of one of their members are not there. Communities that used to work together to look out for incapacitated people among them no longer work as the same sorts of communities where everyone knew one another and where the community was small, interactive and tightly knit. Our society is much more litigious, and liabilities have gone up for people acting as decision-makers without appropriate authority, making people less willing to simply jump in and help. Much of the old fashioned community or family safety net has eroded because of changes in society.

We have seen how guardianship has helped the most vulnerable and most complicated cases among the population with developmental disabilities, enabling people to have a more normative, less restrictive, and more dignified, safe and healthy life. Other people who are vulnerable because of mental illness, brain injury, long term substance abuse or age related disabilities deserve to have the same protections and supports in their lives. In a just society we must be concerned about those who have the most difficulties among us, about those who need and deserve our protection, and we should not rely solely on the haphazard possibility that someone may come forward. Finally, it is important that guardians be carefully selected and trained and appropriately supervised or required to meet standards. Only where there are permanent, dependable, visible programs able to consistently offer guardianship services and/or recruiting, screening, and training, can these goals be met.

## House Human Services Committee

Testimony on: HB 1388

Provided by: Paul Griffin, Immediate Past President

Guardianship Association of North Dakota

January 29, 2001

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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 *Kari 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 receive 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, siblings and grandparents

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

A nursing home administrator seeks a guardian to serve an elderly individual 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, underfunded, 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 uncounted 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 represents 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 committee 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 black ink, appearing to read "P. T. Griffin". The signature is written in a cursive style with a large, sweeping initial "P".

Paul T. Griffin  
1418 - 17<sup>th</sup> Street South  
Fargo, ND 58103

Testimony HB 3102

January 20, 1999

Kathy Hogan

Chairman Price and members of the Committee. My name is Kathy Hogan. I chair the Guardianship Association of North Dakota's Legislation/Standards Committee and I am the Director of Cass County Social Services.

Guardianship issues have been a major concern for the Cass County Social Service Board and Commission for over ten years. In the late 1980, the Cass County Court included funding for the public administrator to provide guardianship services for indigent individuals. This funding was provided until the county court merged with district court in 1995. At that time, both the state courts and the county opted to discontinue funding the public administrator in Cass County.

Since then there have been a series of local crisis and efforts to increase guardianship services for indigent individuals, particularly to expand the range of options to meet the various needs of different individuals. The Cass County Social Service Board was strongly committed to the development of a volunteer guardianship services and has contributed financially to this program for the past two years. Cass County staff have actively recruited volunteers and family members to provide guardianship services and have participated in the training programing. We believe that many guardianships can be provided by family members or volunteers if a strong coordinated recruitment, training and support system is in place for them. Many family members or volunteers are very hesitant to assume the many critical decisions and responsibilities of guardianship without a support system.

Catholic Family Services has provided strong leadership in the development of the Partners in Guardianship program for the past five years. This program is one of the major pieces of a comprehensive Guardianship system of care. This program is cost effective and builds on the North Dakota values of family and community responsibility for our most vulnerable. Attached is a brochure regarding the current Partners in Guardianship program

Based on our experience in the last five years, we have also identified a number of individuals in need of guardianship services who do not have family available or who are so difficult that a volunteer could not be expected to meet the complex needs of individual. Therefore, a volunteer program without a publically funded indigent program(HB 1301) cannot meet the needs of the most difficult and challenging individuals. We strongly urge you to consider all of the Guardianships related bills.

Thank you for your consideration of these bills. I am willing to answer any questions you may have regarding this bill or guardianship issues in general.

### The Problem/The Need:

The unmet guardianship needs in the state of North Dakota are well documented. Past surveys and studies and the most recent study (**A Comprehensive Study of Guardianship Service in North Dakota** prepared for the North Dakota Guardianship Coalition by *Kari Conrad & Associates* submitted July 1, 1996) have clearly and objectively identified the scope of the current problem and a pattern of circumstances and demographics that will establish guardianship as an increasing concern for the near and foreseeable future.

The ever increasing elderly population of our state, the economic factors and job pressures forcing families off of 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, siblings and grandparents.

The advances in medical care and other innovations have extended life expectancy. An expansion of the services available to people with handicaps and disabilities have placed them in the mainstream of our society. These successes have created new concerns and critical problems that expose the very people whom they benefit to less positive possibilities..... abuse, neglect, exploitation and the danger they will not receive needed medical and other services.

The requests for guardianship assistance are widespread and diverse..... from nursing homes to county social services 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 individual 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 of 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 to find a guardian for a client with manic depression to provide structure and secure appropriate treatment. These calls for guardianship service come in on an all too frequent basis. "Can you help?" "Are there service options available?" The answer in nearly all cases is "NO!"

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. Even the program available to individuals with developmental disabilities through Catholic Family Service and the ND Department of Human Services is under funded and facing an additional loss of funds with a growing waiting list. 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 12 years uncounted 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 contacts with the Director of the Department of Human Services, the Directors of Aging Services, Disabilities Services, the ND State Hospital and Mental Health Divisions, the current and previous governors, the legislature through specific committees and individual members, county social service boards and directors, district court judges, state's attorneys and others. There have been studies, surveys, meetings and newspaper articles.

Funding has been pursued through untold grant applications, establishment of a trust, encouraging increased donations, expansion of the involvement of 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 organization and many other approaches.

The "bottom line" is that everyone agrees that there is a tremendous need, but there is neither a willingness nor an ability to assume any responsibility.

What has been missing and continues to be absent is a joint, comprehensive and long-term approach to the problem. An approach that considers the entire need population and not just those sub-groups that a particular agency or program serves.....a combined effort by all of the shareholders, care givers and governmental entities.

This plan should be multi-faceted and must offer the opportunity to meet the expanding needs while building upon the successful components of the already proven services. Such a plan would support a sound guardianship philosophy and minimize the economic impact on all the parties involved..... The critical components of the plan would include:

1. The Currently Available Traditional Guardianship Services: These services meet a variety of needs and should not be abandoned. They 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.\*

2. Corporate Guardianship: The availability of the corporate guardian should be expanded to ensure the "safety net" of competent professional services in all cases where guardianship is deemed necessary by the courts. The corporate guardian would be the "guardian of last resort" and would serve only when other options may not be available or appropriate.\*

3. A Statewide Partners in Guardianship (PiG) Program: This program should be developed. It would utilize a proven approach to recruit, screen and train volunteers to serve as guardians. These "Partners" would also require ongoing training, technical assistance and support as they perform their duties.\*

A specific entity would be required to be responsible for the overall coordination of the system. This entity would develop and provide all of the educational and training requirements, provide and supervise the Partners in Guardianship program and maintain the support and technical assistance services needed by all of the components.

*\* Conjunctive with any plan must be an effort to provide education, training, technical assistance and support as well as establishing a process of standards and certification for those serving in the guardian role.*



An approach of this type would attack the needs of all of the "at-risk" adult population in a coordinated statewide effort. It would avoid many of the common pit falls that have been problematic in the past and would bring all of the concerned factions together in a unified response that would ensure positive actions at the levels of government necessary to finally address the problem.

The Partners in Guardianship project would be a valuable component of this comprehensive plan. It would attempt to meet the guardianship needs of the citizens of North Dakota within the current financial realities while embracing the philosophy that the ideal guardianship relationship is one-to-one rather than larger, ever growing caseloads.

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 E. 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 authority to make personal and/or property decision for another (the incapacitated person)." The purpose of a guardian occurs when a judge decides an individual lack capacity to make decisions on their 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.

**Catholic Family Service  
Guardianship Services Division  
May 1, 1998**

**1. Program History and Needs:**

The guardianship division of Catholic Family Service began in August of 1986 as a result of the divestiture of the superintendent of the Grafton State School (Developmental Center) of his questionable role as guardian for over 1,000 developmentally disabled individuals who resided there and received services. This relationship was clearly a conflict of interest and deprived these individuals of their due process rights. At the time, a group of 200 to 250 individuals needed guardianship and had no one available, willing or appropriate to serve them. Since that time CFS has provided guardianship services to over 500 developmentally disabled individuals in over 60 communities across the state. These services to this population group are funded by a contract with the DD Division of the ND Department of Human Service. However, this contract has never been funded at more than 80% and there has been a "CAP" on the number of people that we can serve. This has resulted in a constant financial crisis and a growing waiting list. Additionally, from the very beginning CFS has been overwhelmed with calls and contacts requesting guardianship services for individuals outside of the DD group. These calls have come from social service agencies, county social service directors, nursing home social workers and administrators, hospital social service workers, private attorneys, states attorneys, district judges, private individuals and family members, advocacy workers and many others. As a result, CFS has worked steadily to develop ways to stretch and expand our guardianship services to meet the needs of these people. The agency has been actively involved in collaborating with other groups, agencies and individuals to assess the scope of the problem and has advocated for the necessary changes and support needed to deal with an ever increasing gap between the vulnerable people of our state who need guardianship and the limited resources available to meet their needs. The studies, surveys and anecdotal information demonstrate that the changing economic and demographic factors spreading across our state are the major causal factors and without a reasonable and coordinated approach this problem will continue to grow.

**2. Program Efficiency:**

Catholic Family Service has nearly 12 year of experience in providing guardianship services at all levels. The agency has participated in over 500 guardianships and has established a widely accepted and supported set of policies and procedures that provide ethical and consistent services to our wards. The program is fully accredited by the Council on Accreditation of Services to Families and Children. Each guardianship is monitored by the appointing court and we have an extensive quality assurance process which includes public forums, case audits, a grievance procedure and state oversight. Fiscal necessity requires that we be both efficient in the use of funds and aggressive in seeing supplements. The current cost of guardianship is \$3.74 /day with only \$3.20 of that covered by the contract with DHS. Private pay wards are charged at the same rate (in the history of the program we have only had 5 of this type of case). Those individuals that we accept on our caseload who do not qualify for payment under the contract and are able to cover the costs on a private pay basis receive our services at no charge which increases our deficits.

**3. Program/Funding Needs:**

Supplemental funding is being sought to meet the obvious needs of the current caseload and to provide a base for the extension of services beyond the DD population to the elderly, chronically mentally ill, substance abuse and traumatic brain injured populations.

**4. Summary:**

Catholic Family Service has been providing quality guardianship services across the state of North Dakota for the past 12 years. Although the primary population group served has been the developmentally disabled we have and continue to work hard to extend services to an ever growing group of vulnerable individuals. Even in the best situation, where a funded contract to provide services exists, funding is insufficient. United Way support is needed to meet the current caseload needs and to help make guardianship available to other populations.

## 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

# G.A.N.D.

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## The Guardianship Association of North Dakota

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2557 South University Drive, Fargo, ND 58105-5756

Phone: (701) 255-4467

April 7, 2000

Carol K. Olson, Executive Director  
ND Department of Human Services  
State Capitol - 600 East Boulevard - Dept 325  
Bismarck, ND 58505-0250

Dear Ms. Olson,

The Board of Directors of the Guardianship Association of North Dakota will be meeting next week and we will again be addressing the critical need for guardianship services in our state. Over the past 14 years our association and our members have worked very hard to secure the assistance of the legislature, the departments and divisions of state government and the court system to bring resources to bear on guardianship issues. Task forces, committees and focus groups have been convened and a number of studies have been completed. In addition, there has certainly been adequate anecdotal information available to clearly confirm the existence and the magnitude of the problem, however, little has actually been done.

The people who need guardianship are the neediest of the needy..... they are among the most vulnerable..... and they are not able to raise their voices and draw attention to their needs. The membership of GAND is aware that there are many needs in our state and a limited amount of funding available to meet those needs, but we cannot accept this as a reason for not addressing the problems.

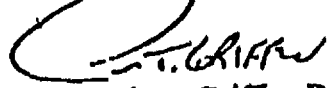
The GAND Board has identified two objectives that we will focus our efforts on as the legislative session approaches. They are:

1. Expansion of guardianship services to the elderly, chronically/seriously mentally ill and traumatic brain injured.
2. The development and implementation of appropriate standards to govern and monitor the activities and performance of guardians.

We know from past experience that any successful strategy is dependant upon an approach that unifies the various stakeholders and coordinates their activities and actions. We are also aware that DHS is in the midst of the budget planning process for the coming bienium. We would like, very much, to work with the Department on a plan with common goals to address these issues and we would like to have an opportunity to meet with you or your representative to explore this possibility.

We appreciate your concern and support and look forward to hearing from you.

Sincerely,



Paul T. Griffin, Board President

C: GAND Board Members  
Linda Wright/Aging Services  
Gene Hysjulien/Disability Services  
Karen Romig Larson/Mental Health Services

# G.A.N.D.

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## The Guardianship Association of North Dakota

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2537 South University Drive, Fargo, ND 58105-5756

Phone (701) 255-4457

June 12, 2000

Yvonne Smith, Acting Executive Director  
ND Department of Human Services  
State Capitol - 600 East Boulevard  
Bismarck, ND 58505-0250

Dear Ms. Smith,

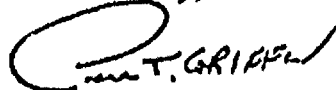
As you know, the Guardianship Association of North Dakota is very concerned about the lack of availability of protective services (especially guardianship) for the vulnerable citizens of our state. Although we have tried very hard to be pro-active and work collaboratively with a variety of groups and agencies to positively affect this situation, to date, our success seems to be limited to the areas of awareness and education..... little has been achieved in actually increasing the availability of needed services.

GAND has attempted to quantify the problem by sponsoring and conducting studies and we have established a standing Legislative and Standards Committee on our Board. This committee has developed a brief but critical list of concerns ("*GAND Critical Issues List 2000 - 2001*") that we believe need to be addressed. I am enclosing a copy for your reference.

Because of our concerns and our desire to work with all of the parties involved, the Board asked me to contact the Department of Human Services to explore ways that we could work together to identify and achieve common goals. I did this in a letter to Carol Olson on April 7<sup>th</sup> (I have enclosed a copy). Even though time is short (we understand that your budget is due 8/15) GAND would still very much like to continue explore the collaborative possibilities. At the same time, we would like to formally request that you include funding to meet the needs we have identified in the 2001-2002 budget.

We continue to appreciate your concern and support and we look forward to working with you to effectively deal with the needs of our vulnerable citizens.

Sincerely,



Paul T. Griffin, Board President



# NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

Edward T. Schafer, Governor  
Carol K. Olson, Executive Director

Executive Office

600 E Boulevard Ave, Dept 325, Bismarck, ND 58505-0250  
(701) 328-1814  
Fax (701) 328-1545  
Toll Free 1-800-472-2622  
TTY (701) 328-3480

July 5, 2000

Paul R. Griffin  
Board President  
G.A.N.D.  
2537 S. University Drive  
Fargo, ND 58103-5736

Dear Mr. Griffin:

I appreciate your letter of June 12, 2000, expressing concern about the issue of appropriate resources to provide guardianship for vulnerable persons. We recognize that there is a gap between the need for the service and the availability of resources to meet the need.

While the Department is often identified as the agency from which funding for guardianship services should originate, we continue to be concerned about the conflicts inherent in such an arrangement. Specifically, the Department is payer and provider/purchaser for clinical and therapeutic services for a broad and varied group of vulnerable persons. These services often involve case management and other therapeutic interventions. If an assigned guardian is meant to advocate for and act on behalf of a vulnerable client, it would be in the best interest of the client for that role and function to occur separately from the service delivery system. I truly believe that distinct boundaries should exist between the role of providing services and care and the role of legal guardianship, both in funding and in role definition.

In our budget building process, we submit a "base budget." In accordance with the Governor's guidelines, this budget will include no increase in general fund spending. New or expanded programs become a part of this budget only in the event that other program general funds are decreased. In addition, we are permitted to submit "optional adjustment requests" for increased funding, including inflation adjustments, growth in service demand, and new programs. These requests are prioritized and considered by the Governor's office for inclusion in our budget. At this time, for the reasons cited above, we do not anticipate submitting an "OAR" for an expanded guardianship program.



Page 2. Griffin

Please understand that the Department is aware of and concerned about the needs you have identified. We would certainly be willing to discuss this issue with you. Karen Larson, Gene Hysjulien, and Linda Wright are most knowledgeable, so feel free to contact any of them directly.

Sincerely,



Yvonne M. Smith  
Acting Executive Director

cc. Karen Larson  
Gene Hysjulien  
Linda Wright  
Brenda Weisz

# G.A.N.D.

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## The Guardianship Association of North Dakota

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2557 South University Drive, Fargo, ND 58105-5736  
Phone: (701) 255-4457

July 10, 2000

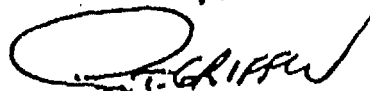
Yvonne M. Smith, Acting Executive Director  
North Dakota Department of Human Services  
600 E. Boulevard Avenue - Dept 325  
Bismarck, ND 58505-0250

Dear Ms. Smith,

Thank you very much for your letter in response to the concerns of the Guardianship Association of North Dakota. I have forwarded a copy to all of our Board members and I am certain that it will be discussed at our July 19<sup>th</sup> meeting.

I appreciate your candor, concern and assure you of our most positive and cooperative efforts.

Sincerely,



Paul T. Griffin, Board President

C: Karen Larson  
Gene Hysjulien  
Linda Wright  
GAND Board Members

## 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.

# Ex-Cass public administrator charged with theft

11/3/98

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 Oistad, 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 Eliza

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.

SENATE BILL NO. 2329  
GUARDIANSHIP APPROPRIATION BILL  
TESTIMONY BY BILL CHAUSSEE, PRESIDENT  
GUARDIANSHIP ASSOCIATION OF NORTH DAKOTA

Chairman Nething and Committee Members:

My name is Bill Chaussee. I am the President of the Guardianship Association of North Dakota, a non-profit corporation, whose mission is to establish training, standards, and a code of ethics for guardians and other fiduciaries. I am, also, the Administrator of Guardian and Protective Services, Inc., a non-profit corporation, that provides guardianship and protective arrangements for vulnerable adults.

Some of our most vulnerable low-income citizens have no family members or capable friends living nearby to assist with their daily needs: to help them with home and medical services, to help apply for programs that will affect their financial well-being, to provide protection from physical harm or financial exploitation. Many, who have family in North Dakota, have needs that their families cannot meet.

Due to lack of funding it is difficult and at times impossible to meet their needs through unpaid volunteers, public administrators, or corporate guardians. These individuals in need are frail elderly, severely mentally ill, or traumatic brain injured and come from all walks of life. They may have been teachers, nurses, farmers, or business people. Their needs are complex and require much time, care, and skill. They deserve help to maintain their dignity and independence.

This past year Guardian and Protective Services, Inc. served 233 vulnerable adults in North Dakota. Of these individuals 142 were determined to be low-income, 165 elderly, 48 severely mentally ill, and 12 traumatic brain injured. We have been providing services to low income cases for the past 4 years through grants, donations, and fee generating cases. Without a stable funding mechanism we will be unable to continue to provide guardianship services to these low-income vulnerable adults.

We request your support of Senate Bill No. 2329.

SB 2329

**SENATE BILL 2329  
TESTIMONY BY RODGER WETZEL, DIRECTOR,  
COMMUNITY HEALTH & ELDERCARE, ST. ALEXIUS MEDICAL CENTER**

Good morning! My name is Rodger Wetzel. I am the Director of Community Health and Eldercare at St. Alexius. I have been working in the field of human services for 30 years, in both the public and private sectors. I am here in support of SB 2329.

Most importantly, I have been asked and appointed by county judges, and now district judges, to serve as the Court Visitor in more than 250 guardianship cases. The Court Visitor completes a detailed assessment and makes recommendations to the judge regarding the pending guardianship. In this capacity, I have worked closely with judges, attorneys, guardians, those needing guardians, family members, and concerned community agency staff.

These guardianship cases have involved frail elderly, people with Alzheimer's and other dementias, those with head injuries, victims of strokes, people with serious mental illnesses, those who have mental retardation or other developmental disabilities, and other types of cases.

We in North Dakota have a good system of guardianships for those with developmental disabilities, whether they have resources or not. The Legislature deserves thanks for this support. But we have a great need for guardians, both volunteer and those receiving a stipend, for people in the other groups, especially if they are poor, have no families, or have completely alienated family members.

I have volunteered to serve as Court Visitor at no cost in several cases. I have recruited volunteers to serve as guardians in some cases. I have personally asked attorney to assist in indigent cases. I have provided guardianship training at no cost. But there are times that I must say "no" because of limits on time and resources.

We have wonderful services to keep vulnerable adults at home, and out of institutions for a longer period of time. The Legislature deserves thanks for this. But with more vulnerable adults remaining at home longer, there are more persons at risk to themselves or at risk of being taken advantage of by others. These adults may need a guardian to make legal, financial, health, living arrangement, nursing home placement, education, and/or vocation decisions for them. This also can reduce their need for crisis services or more intensive services later on.

This bill would offer some resources to train volunteers for some types of cases, and to provide guardianship services for the poor, and those who have no supportive family members.

I urge your support for SB 2329. I would be happy to answer any questions. Thank you.