

2011 HOUSE HUMAN SERVICES

HB 1199

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
January 26, 2011  
Job #13441

Conference Committee

Committee Clerk Signature *Vicky Crabtree*

## Explanation or reason for introduction of bill/resolution:

To create a unified system for guardianship services for vulnerable adults who are ineligible for developmental case management services.

## Minutes:

See attached Testimonies #1-5

**Chairman Weisz:** Called the hearing to order on HB 1199.

**Judy Vetter:** President of the Guardianship Association of ND. (See Testimony #1.)

**Chairman Weisz:** Using the example that you used, you state the family was aware of this and they did nothing?

**Vetter:** The professionals working with the family only got empty promises.

**Rodger Wetzel:** Advocate for the ND seniors testified in support of the bill. (See Testimony #2.)

**Carole Watrel:** Testified in support of the bill. I've been a guardian for 10 years now for the same woman. My ward has schizophrenia and bipolar disease and now on dialysis. She's a vulnerable adult. The family was always fighting over the care of her so she was appointed a guardian. Please pass the bill.

**Amy Fast:** McKenzie County Social Service Director stated her support and those of the County Directors Association of this bill. This program is underfunded. Ask you pass this bill with amendments.

**Rep. Devlin:** Is there anything in ND Century Code that can force families to take care of their family members?

**Fast:** I'd defer to the department. (Someone spoke from the audience and it is inaudible.)

**Wetzel:** No mandate that family has to make decisions for family members.

**Shelly Peterson:** President of the Long Term Care Association spoke in support of the bill. (See Testimony #3.)

**Rep. Devlin:** (Reads second sentence in second paragraph in testimony). Do you mean to provide it? Why wouldn't you want to seek it?

**Peterson:** We don't think it is appropriate for us to contact the court and be the intervener because we are providing their care. We are making decisions we sometimes feel we should not be making. The cost to seek guardianship is on the average \$2,000. Sometimes you have family members that want to intervene and then it becomes a complex issue. We are trying to provide care services and don't want to get into the middle of a huge family fight. Sometimes the court will ask who is going to be the guardian. That is not appropriate for us to get involved with either.

**Rep. Devlin:** I was thinking about your paragraph above it where you can't find them a place to live and you obviously can't throw them out on the street and yet at that point you don't feel you should seek guardianship for them and that is the part I am struggling with.

**Peterson:** We are struggling with it too.

**Rep. Holman:** Maybe the gap here is identification of potential clients. Sometimes we don't find out about these people. How do we do that?

**Peterson:** There are others that can answer that question than I.

**Rep. Schmidt:** If you were contracted to do this, do you think it appropriate to do it?

**Peterson:** No, I don't believe so. I believe we need a third party independent of the care giver.

**Lyle Halvorson:** Associate State director, AARP ND testified in support of the bill. (See Testimony #4.)

**Teresa Larsen:** from Protection and Advocacy Project testified in support of the bill. (See Testimony #5.)

**Rep. Porter:** Does your agency do any of the work currently and how much of your budget is put towards guardianship.

**Larsen:** We do partition for guardianship when there is an emergency of health and safety. A recent example is when someone had fallen and broken her hip. The doctor indicated she needed medical treatment before he could perform surgery on her. She had a guardian already who was a relative and would not authorize the treatment. That relative saw her as an elderly person with a disability and really didn't need to have this. The doctor felt she would die if she didn't have it. So we did go in that case, petitioned the court and got an emergency guardian and appointing a different guardian. If we did that every time someone needed a guardian that would probably be the only work we would get done.

Our job is really to look out for the rights of the individual so it could be a conflict for us having their rights taken away.

**Rep. Porter:** I think the title of your agency also includes protection.

**Larsen:** Correct.

**Rep. Porter:** So sometimes taking someone's rights away is because it is in their best interests in protection.

**Larsen:** I don't disagree with you and that is why there are times we go in and do this kind of work.

**Rep. Porter:** How often is it done?

**Larsen:** I would guess a half a dozen guardianships a year.

**Rep. Porter:** How much money would you allocate to each of those six per year that you would do?

**Larsen:** We don't charge for those. That is what we use part of our funding for. The ones we are involved with are often contested by a family member who is not acting in the best interest of the individual and can be lengthy and complicated. I'd throw out a figure of about \$10,000.

**Rep. Porter:** When the cost is \$10,000, is the person's finances looked at to see if they can sliding scale pay and pay a portion of that?

**Larsen:** We don't charge under any circumstances.

**Connie Hutmacher:** From Dickinson, ND told of her personal story regarding her father. Because my elderly father's health was deteriorating I got my father some full time care. He and my step-mother were placed in an adult foster care home. I was given power of attorney so I could check on the joint bank account and make sure all the bills were being paid. We were told we had to have an auction of my father's property. My father insisted because the care givers were taking care of them, they could have their property. We went ahead with the auction. The auction check was over \$18,000 which I deposited into the bank and two days later when I checked on the account, \$15,000 had been withdrawn. The bank informed me that the care giver brought my dad into the bank and he withdrew \$15,000 in \$50 bills. I immediately informed the social service office in Dickinson. About a week later they asked me if there had been any activity on life insurance. I checked with the life insurance company and the caregiver had written a note and had my father sign it and a check in the amount of about \$19,000 was in her checking account in her name. I again contacted social services and asked them to help me clear up this situation which they did. Then I found my father's \$50,000 truck was put into the caregiver's name. Luckily we were able to recover all property. I was told that my father should really have a guardian and so I am now his guardian. It is a lot of work to be a guardian. The Judge felt it necessary to split the duties with me as a guardian and he assigned a conservator also.

The conservator started legal action and was able to recover all of my father's farmstead property was able to sell it and the money in is his account. The caregiver lost her license.

**Chairman Weisz:** Committee if you have some continued questions of Judy, I will let her come up and you can ask them. Can you tell me how many currently have guardianship orders in ND?

**Judy Vetter:** I do not know that. There is Catholic charities in ND that serve the developmentally disabled and I don't know what their numbers are.

**Rep. Anderson:** How do pick and watch over a guardian? You must have some standards.

**Vetter:** Difficult to answer. How you pick the guardian is really the determination of the court and once it gets there and the petition is filed. Family members will step forward, but the key is if they are appropriate to serve, able to serve, live within the state and what their motives are. As far as monitoring, there is no one that goes out and reviews and sees how the person is doing. No funding in state for court monitoring system.

**Rep. Holman:** Accessing clients, how do you find clients?

**Vetter:** Some are referrals that could come through home health nurses, city county nursing, social services, hospitals, and Dept. of Human Services Aging Services Division. The problem is there is no funded and consisted way of reporting.

**Rep. Kilichowski:** The question is to the Chairman. I'm confused here. This bill was introduced and it changes the must and shall to may and now everybody is coming in and supporting this bill, but want to put it back to the original way. Can anybody enlighten me why this bill was introduced?

**Chairman Weisz:** You need to look at the amendments offered. I think that was the intent of the bill and there was a drafting issue.

**No Opposition**

**Chairman Weisz:** The hearing is closed on HB 1199.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
February 1, 2011  
Job #13808

Conference Committee

Committee Clerk Signature

*Vicky Crabtree*

## Minutes:

**Chairman Weisz:** We will look at HB 1199. I had a nice visit with our Chief Justice on this and hoping he would be able to tell us what to do and that wasn't the case. We discussed some of the aspects in this bill and about vulnerable adults in general. The clerk handed out some information that the courts hear. (See attachment #1.) The numbers are going up. With my conversation with the Chief Justice, he thinks it is imperative that we have a comprehensive study on the whole guardianship issue. Because of the roles of the courts, the counties, the non-profits and then the individuals and their families that are all involved and interact, he thought it was imperative before we take any major steps that we know how to address these issues. He told me why he never recommended any funding through the court system for this is because there are a lot of conflicts involved with the courts doing it. We don't need to take this up now. This problem will only get worse as we have more becoming elderly. I'm going to have some language drafted that would mandate putting money into doing a study. I will probably have the department come in tomorrow.

**Rep. Holman:** I handed out some information on CHIPS. It should be pretty close. It is just information.

**Chairman Weisz:** We will hear that tomorrow and get some amendments for this bill.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
February 7, 2011  
Job #14121

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Weisz:** Called the committee back to order on HB 1199. Handed out amendments. I had some discussion with leadership and Appropriations. My concern was I think we had that discussion in committee; if we are going to do a study we want a study done right. It is a complicated issue because you have the court system, the county government, and you have non-profits involved. Generally if you do an interim study, you have people line up and say we need money. That doesn't address the interaction between all the players. The language is structured that Legislative Management or Legislative Council will pick the consultants, appoint an interim committee to tell the consultant what they want and that consultant will report to the interim committee. There will be no one with a bias whether it be the court system or DHS or anyone else. Consultants generally report what people want to hear. The intent here is to be totally independent and unbiased and we will actually get a study that may do us some good.

**Rep. Kilichowski:** I motion to move the amendment.

**Rep. Devlin:** Second.

**Chairman Weisz:** The dollar amount will probably change in appropriations. We just put a dollar amount on there, but it will probably cost more. You are looking more like \$100,000 to \$150,000 to try and do a decent study.

**Voice Vote: Motion Carried.**

**Rep. Hofstad:** I move for a Do Pass as amended and re-referred to Appropriations.

**Rep. Schmidt:** Second.

**Vote: 12 y 0 n 1 absent – Rep. Porter**

**Bill Carrier: Rep. Anderson**

VR  
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1199

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a study of guardianship services for vulnerable adults in the state; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. GUARDIANSHIP SERVICES STUDY.** During the 2011-12 interim, the legislative management shall contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The consultant shall provide periodic reports to the legislative management. The consultant shall present the final report and recommendations regarding the study to the legislative management before June 1, 2012. The legislative management shall report the findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the legislative management for the purpose of contracting with a consultant for a study of guardianship services for vulnerable adults as described in section 1 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly



Date: 2-7-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1199

House HUMAN SERVICES Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kilichowski Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice  
Vote motion  
carried  
on  
amendment*

Date: 2-7-11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1199

House HUMAN SERVICES Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Hofstad Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Anderson

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

**REPORT OF STANDING COMMITTEE**

**HB 1199: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1199 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a study of guardianship services for vulnerable adults in the state; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. GUARDIANSHIP SERVICES STUDY.** During the 2011-12 interim, the legislative management shall contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The consultant shall provide periodic reports to the legislative management. The consultant shall present the final report and recommendations regarding the study to the legislative management before June 1, 2012. The legislative management shall report the findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the legislative management for the purpose of contracting with a consultant for a study of guardianship services for vulnerable adults as described in section 1 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1199

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Appropriations Committee Roughrider Room, State Capitol

HB 1199  
2/16/11  
14628

Conference Committee

Committee Clerk Signature

*Shirley Branning*

### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide for a study of guardianship services for vulnerable adults in the state; and to provide an appropriation.

### Minutes:

You may make reference to "attached testimony."

Chairman Delzer: Introducing Representative Representative Weisz,

**Representative Robin Representative Weisz:** He introduced HB 1199. He stated that there are a lot of unanswered questions regarding vulnerable adults and the guardianship services. The counties who have a responsibility under current law provide a guardianship if no one else can be provided. The question of who has to pay for that. Taking it back down you have the 501C3s, the non profit organizations that are currently doing guardianship services. We didn't have enough information to know if we should fund that expansion or not. We wanted a study that was run by true legislative management not just the results of a study that asks for money. We wanted it structured so that we could expend money, legislative management will hire a consultant and have them report to an interim committee and the consultant will be directed. This is a very complicated area because of the interactions between courts. The original bill would have funded someone to petition the court for guardianship. We would not fund any expansion but we think the study is very important, to spend the money to do the study.

**Representative Wieland:** We have in another bill a discussion on foster care for adults, I guess it isn't in another bill, was there any consideration given to include foster care in this bill?

**Wiesz:** No, there wasn't. There are plenty of complexities just within the guardianship so we did not want to bring other things into it.

**Representative Skarphol:** Is there a definition of 'vulnerable' in the code?

**Wiesz:** I don't believe there is, or there might be in criminal section. I can't answer definitively.

**Chairman Delzer:** First off, this is not permissive, it's a directive; how did you come up with the \$50,000, why did you say it cannot be done by an interim committee? What happens if we can't get someone for the \$50,000?

**Representative Weisz:** It's whatever number you put in. We struggled to put a price tag on it because there was no RFP. The committee very strongly believed if you give it to an interim committee, the counties will come in and say we don't want this

**Representative Kreidt:** I think last session we appropriated \$40,000 to provide a guardianship service, or was that a study also?

**Representative Weisz:** There is \$40,000 in the Department of Human Services (DHS) budget for minimal services. We would like to see the policy language in here go forward.

**Chairman Delzer:** Did you get into how much that has been used?

**Representative Weisz:** No we did not. The dollars didn't really do much. Funding without direction does not seem to solve the problem.

**Representative Pollert:** We have the DHS budget after crossover. Is there any reason why, if this budget wasn't here, we couldn't talk then....or is that an infringement on the policy committee?

**Chairman Delzer:** I'll add also, what about taking the money out for now and let the policy committee go forward.

**Representative Weisz:** I don't think we, as the committee, would have any objection. I don't think there's a problem with looking at the money part of it, but we strongly believe we need to have an independent study done

**Representative Skarphol:** There's times I think it might be advantageous to Legislative Management budget...if there would be some way for us to have a little less transparency on the money, it might save us money in the long term.

**Representative Weisz:** We would have no problem with that because we are struggling with numbers. If the Appropriations Committee wishes to take action, we have no problem with that.

**Representative Monson:** I can't find the definition of a vulnerable adult.

**Representative Dahl:** It is defined in title 50-25, it means an adult who has a substantial mental or functional impairment.:

**Chairman Delzer:** Further questions? Thank you Representative Representative Weisz We have the bill before us. Do we have any ideas on it?

**Vice Chairman Kempenich:** I move we that we take the \$50,000 out of the appropriation part of it, Section 2.

**Rep. Monson: Second**

Discussion.....

**Representative Pollert:** I will let Representative Weisz know and he can tell his committee that we will look at this issue and will make sure it is looked at.

**Representative Weisz:** If you do pass this out of committee will we carry it?

**Chairman Delzer:** We will carry it.

**Representative Kreidt:** The \$40,000, I think it was appropriated 2 separate times

**Chairman Delzer:** It would have fallen under turnback if not used.

**Representative Nelson:** Why isn't another option to pull the unutilized Human Services budget and leave this bill untouched?

**Chairman Delzer:** This does appropriate it to Legislative Management. If you pass it over and want to do anything to it, it restricts you on whether or not you want to have a lot of discussion on changing that amount. The other problem is that in the second half.... Further discussion? **Voice vote carries.**  
The bill is amended to remove Section 2.

**Vice Chairman Kempenich:** Move a Do Pass as amended.

**Representative Wieland:** Second

**Voice Vote Carried.**

**Chairman Delzer:** I have some questions about the "shall". Addressing Roxanne Woeste, Legislative Council Representative, (LC). Currently 1001, which we have before us has the dollars in it for consulting services. Do you know what that dollar amount is?

**Woeste:** Typically for the budget for Legislative Council we do include the money for professional services. Currently there is \$300,000.

**Representative Wieland:** I hope we can pass this bill. Back in my county commission days, we had a lot of discussion about vulnerable adults, and these are not just people who are poor, there are also people with a great deal of money....fraud and convictions....this has been a long time coming.

**Vice Chairman Kempenich:** I think we do need to look into this.

**Roll Call Vote on Do Pass as Amended: Pass 20-1-0**

**Carrier: Representative Wieland.**

**Representative Skarphol:** Question on language of shall directed to Woeste.

**Woeste:** If it says "shall" in Legislative Management, then they will have to do that. They are then prioritized.

**Chairman Delzer:** How many times do you remember that we mandated that they contract with somebody?

**Woeste:** There are usually a handful of studies that are required.

**Representative Skarphol:** There is a difference between shall study, shall contract, and shall consider. Consider is soft, correct?

**Woeste:** Yes.

Meeting closed on HB 1199.



11.0021.02001  
Title.03000

Prepared by the Legislative Council staff for  
House Appropriations  
February 16, 2011

VK  
2/17/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1199

Page 1, line 2, remove "; and to provide an appropriation"

Page 1, remove lines 15 through 19

Renumber accordingly

Date: 2/16  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1199

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*remove section 2*

*Voice vote carries*

Date: 2/16  
 Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1199

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X	Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 1

Absent 0

Floor Assignment Rep. Wieland

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

**REPORT OF STANDING COMMITTEE**

**HB 1199, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1199 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "; and to provide an appropriation"

Page 1, remove lines 15 through 19

Renumber accordingly

2011 SENATE HUMAN SERVICES

HB 1199

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

HB 1199  
March 21, 2011  
15763

Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

Relating to guardianship services and to provide an appropriation.

**Minutes:**

See "attached testimony."

**Senator Judy Lee** opened the hearing; no fiscal note attached.

**Representative Keiser, District 47** introduced the bill; it was changed in the House as the original bill had an appropriation. He supports the bill in its current form. It requires that during the 2011-2012 interim the legislative management committee **shall** contract with a consultant to study the guardianship services for vulnerable adults in the state. This is the number one concern for the silver haired people; this is a very complicated issue and has a lot of associated factors that are involved in this process. The Department of Human Services had a bill in an earlier session defeated which would establish guardianship service program in their department. It is important to study in order to do future deliberations; think it would be important to complete this.

**Senator Judy Lee:** The funding for this study then would come out of the legislative management budget? **Representative Keiser:** The legislative management sets aside a relatively large amount of money each session. To his knowledge they have never utilized all of the money in their study budget. Knowing that this would be a required study, they could make any accommodations needed. **Senator Judy Lee:** Heard and discussed some really nasty situations with financial abuse, along with other kinds of things. Don't think people realize how prevalent it really is. Her only concern is waiting two years to do something again. The Chief Justice has serious concerns about this as well. Did anyone in the House visit with the Chief about his concerns, and whether or not his concerns would be adequately addressed and if they are not—if you would be amenable to an amendment that would include the courts concerns also. **Representative Keiser:** Doesn't know if the House talked to the Chief Justice in the court system. As a prime sponsor, he would be amenable to any amendment that would provide any additional input that would strengthen the quality of the study.

**Senator Mathern:** Wondering if we maybe should just figure out how much would be spent on a study and just put that in the bill and get somebody working on the problem? What indication is there to you that we don't know what the problem is so it requires study?

**Representative Keiser:** He is not an expert on the subject so is not prepared to answer the question. Do think that just representing the House's position; they think we need to do

a study before committing significant dollars to this issue. Not that we don't need to commit resources if and when we do it, we want to do it based on information not just anecdotal kinds of things. Think the House is committed to doing the study and positioning both chambers so that legislation will be supported. Haven't been able to support it so far.

**Senator Dever:** How much money was in it to start? Should there be an appropriation or fiscal note and send to Appropriations? **Representative Keiser:** Doesn't know; will tell you that he has done a significant number of bills like this that have not had the specific appropriation and the legislative management committee has funded them. At this point, he doesn't have a dollar amount for the consultant. There is a pool of money available for these studies; risk would be that if not adequate, then what would you do? **Senator Dever:** When we put a dollar amount in a study that ends up what they charge? (Correct) Then we don't know if we paid too much! **Representative Keiser:** In the original bill the money was not for a study; it was for a program.

**Larry Bernhardt, Executive Director of Catholic Charities North Dakota** testified in favor of the bill (#1 Testimony) and to offer amendments.

**Senator Berry:** How do you envision getting the number of guardians we need, and as far as guardianship goes what process has to be gone through to give someone a guardian? Is there a court process that has to be done to declare them incompetent, etc? **Larry Bernhardt:** Their experience with Catholic Charities is guardianship for the developmentally disabled. Would see the process very similar for other vulnerable adults; process is the same in the court system. If someone thinks another needs a guardian then they petition the court and all guardianships are determined by the court system. **Senator Berry:** To determine if someone needs one, are there elements that have to be laid out? How does the court make that determination—are there certain things that must be proven? **Larry Bernhardt:** Yes, in statute it is very specific about what has to be there. Basically you have to prove that a person is not able to care for themselves, not able to make those decisions themselves in several areas of their life. The court usually does that by testimony, but also by a report done by some uninterested party. The number of guardians—in his previous vocation he was the director of social services in Stark County and saw that there were constantly people that needed guardians that couldn't get them because there was no one to serve in that capacity. Most guardians would be from the immediate family first, but if not then look at someone else that is willing to provide that service. There are some private guardianship providers in the state today, and also have public administrators in some counties who can serve in that capacity if the county and the court makes that determination. A lot of counties do not have them, and a lot of counties where guardianship services are not available. Their vision is that the \$266,000 that they are suggesting in the bill would appropriated to the Department of Human Services and that they would make the determination of how the service would be provide. Thinks it is very important that there is a "gate keeper" for guardianship services, otherwise (guessing) as soon as the law would pass there would be a need for about 100 guardians in the state. In the DD system, the guardianship is the case manager. Department of Human Services decides who gets a guardian, so thinks the same process could be put in place by the department. Need to start somewhere and this would make that possible to at least start with 50 people that don't have a guardian today.

**Senator Berry:** Representative Keiser felt very much a need for the study; he felt it was reasonable to have an actual study in place so that we would have a defined plan to have the information ahead of time so we know where we are directing the resources. **Larry Bernhardt:**

Thinks another study would simply give us the same information we already know. There is a need for guardianship services in North Dakota, that it is all over the state and it depends on what other kinds of services might be available. Thinks if a program is built with the safeguards in place, can build the program as the service is provided.

**Senator Berry:** Is there a model out there right now of how you want to do that? **Larry Bernhardt:**

Yes, the DD system (developmentally disabled). Catholic Charities of North Dakota provides corporate guardianship for all the developmentally disabled in the state. Today they have 405 people that they provide guardianship services for across the state. That model is workable for all other vulnerable adults as well. Other models that could be chosen as well. Would leave that up to the department to make the determination. Could ask just about anyone in North Dakota and they would think the model used for DD is an excellent model and works well.

**Senator Mathern:** What was the rationale for the original bill with a \$65,000 appropriation? It appears your amendments would put the program in place for about 50 people; do you know how it originally was set at \$65,000? **Larry Bernhardt:** He knew, but can't remember right now. Maybe someone else that testifies would know.

**Senator Judy Lee:** Just looking through the roster of Senate bills; had discussion about individual whose family member was being financially abused. Does anyone remember the number—they seem to fit together. (SCR 4010—resolution provided for a study)

**Marlowe Kro, Associate State Director, AARP North Dakota** testified in support of the bill. (#2 Testimony) SCR 4010 is the one that makes reference to judicial services and other services; particularly focuses on the need for guardianship services and public administrator services. With all due respect, believes this issue has been studied many times over the past 30 years. Prior to his work with AARP he worked for the Department of Human Services for 24 years and can recall a guardianship study in 1979 (32 years ago). He would encourage the committee to strongly look at actual funding for the direct delivery of guardianship services; thinks that is what the need is. Studies done in the past very adequately document the need. Understands that about 1 out of every 5 individuals in nursing homes right now need some level of guardianship services and do not have access to that because of the lack of either an appropriate guardian or family member.

**Senator Dever:** Are guardians available for people with resources? **Marlowe Kro:** Yes, people with resources can seek guardianship services and pay for them. The issue they see is that most of us don't take the personal responsibility to make provisions for guardianship or other legal authority representation when in a situation of competence. It gets to be a real issue if this is not done at some point in earlier life; difficult when reach diminished capacity. Public education needed on guardianship; very similar that all should have advance directives—power of attorney for health care, general purposes, etc. Those with limited resources come to the attention of human service delivery systems.

**Senator Judy Lee:** The problem for the people who have means (this is where financial abuse comes in), is that there is no way to get the courts involved unless the individual requests it. That's the problem—if somebody is being exploited, the people doing so aren't



the least bit interested in having any kind of connection, so that may end up tying in more with SCR 4010.

**Senator Berry:** If 1 out of 5 need guardians, where are the guardians going to come from? Understands the need for the finances to apply for or get into that process of being evaluated, but then where will the guardians come from? **Marlow Kro:** It is a concern; others with more expertise than he has. There is a shortage, and to find guardians that are appropriate, responsible—is a big challenge but if there were adequate funding that would enhance the opportunity for agencies to be able to explore better and maybe identify and come up with a means to recruit guardians for such individuals.

**Senator Berry:** Questions on two terms: RFP? (request for proposal) and corporate guardianship? **Larry Bernhardt:** used when there is a contract with the Department of Human Services through the DD division. They provide \$X by virtue of a dollar cost to service a guardian. Right now thinks it is \$5+ a day; that will go up starting July 1<sup>st</sup>, so are paid \$150 month for serving as a guardian for "John Jones". With the 400 they currently have, the department pays the funds and the Catholic Charities hire guardians and staff and train them to provide that service. **Senator Judy Lee:** Is the funding that the department adequate to cover the costs of running the guardianship program? **Larry Bernhardt:** No, have requested additional funds within the budget for the Department of Human Services; there are two requests in Appropriations in the House side. Need more slots—currently can only serve up to 411 people in North Dakota; currently at 405 and the number continues to grow. If the funding doesn't increase they will have people on a waiting list to get guardianship services in North Dakota.

**Senator Mathern:** Think another way of addressing it would be—your agency is a corporation and as such a corporate guardianship means not a specific individual is the guardian, but the corporation is the guardian and assigns individuals to those specific cases—would that be accurate? (Absolutely accurate)

**Judy Vetter, President, Guardianship Association of North Dakota; Administrator of Guardian and Protective Services, Inc.** testified in support of the bill (#3 Testimony & attachments) in its original form; would like attached amendments to be considered.

**Senator Mathern:** The original bill said \$65,000—do you know what the rationale was for that amount? **Judy Vetter:** She doesn't; not sure who came up with that amount or where.

**Roger Wetzel, retired but providing PRN services** testified in support of the bill with funding for guardianship. Attachment #4 He co-chaired the last statewide coalition that resulted in the legislation at the 2005 session requesting the appropriation that Ms. Vetter mentioned. Had 30 organizations, including the courts, medical association, long term care, hospital—it was unanimous that we needed funding for guardianships. Was disappointed with the solid effort behind the unanimous consensus funding that they ended up with the small dollar amount.

**Senator Dever:** Wants to understand how the process works. **Roger Wetzel:** It is not a well known process; someone decides that "Roger" is maybe in need of a guardian. He is not taking care of himself, has too many dogs, being financially exploited, etc. Could be

someone from the hospital, social worker—someone needs to petition the courts. You find an attorney who gathers information to indicate whether a guardian is needed. The info is presented to a judge who looks at it to determine if guardianship is necessary. If emergency the judge will appoint a temporary guardian until the hearing. Needs to be evidence presented so another attorney is appointed to make sure appropriate procedures are followed. Thirdly, there needs to be a medical report from a family physician, psychologist, or neuropsychologist. Fourthly a social worker or nurse is appointed as the court visitor. They would interview the individual, neighbors, family, friends—anyone that can tell why that person seems not to be functioning appropriately. As the court visitor, he would also be required to look at alternative arrangements; could be a temporary situation. Social worker looks at alternative options—representative payee, need for in-home family services. Makes a report to the judge, along with others involved. Then a court hearing is held; the two attorney's, the court visitor, the older adult, concerned agencies, family, etc can testify. Information gather process so judge can make a decision—full guardianship, limited guardianship, short term guardianship, etc. Often can get hearing services volunteered, but if there is need of a guardian, money is needed.

**Senator Dever:** If the person has resources then they pay for the guardian? **Roger Wetzel:** The guardian Ad Litem (second attorney) and social worker will sometimes try to find someone; family member if no money. If no money, trying to get a volunteer is about impossible because nobody wants to volunteer to be a guardian for someone that is medically ill, head injured, or chronic alcoholic, dementia, etc. With no money they often don't even make it to the hearing process so the person just flounders out there. If they have money, often exploitation takes place—there's all kinds of friends and neighbors who say they will put their name on the checking account to help pay bills, or borrow money, etc. The most rapidly increasing need is financial exploitation—often done by someone that has befriended or relative—always someone willing to help them spend their money.

**Senator Judy Lee:** If those people had funds to pay for the guardianship, that would be addressed by the court? **Roger Wetzel:** Correct; have models but do need training and standards; there are retired social workers, nurses and others willing to serve as guardians if there is some compensation for that.

**Senator Dever:** Advance directives and power of attorney are important; if that is specified then that is what the court follows. **Roger Wetzel:** In most cases that is exactly right; someone is already set up to manage their financial and legal, as well as health issues. Unfortunately there are a lot of families in conflict that fight over mom and dad and their money that can't come to a consensus. If the durable power of attorney and advance health care directive is done there is no need for the courts.

**Senator Judy Lee:** Knew of a person financially exploited by a brother said this wouldn't be happening if I didn't have any money—that is exactly right. It is a hateful situation; wounds to the family that will never heal. **Roger Wetzel:** Exactly, seems to be a sense among some families that they have a right to their older relative's money. It shouldn't be wasted away in a nursing home or left to a charity.

**Senator Berry:** Does any other state have a plan that you would say seems to be well done? **Roger Wetzel:** Know it would be easy to find out; many states look at this as an

essential part of that continuum of care. If someone is incapacitated, how do they apply for services, how will they understand the forms, what happens if they forget to fill out the applications?

**Jim Jacobson, Director, Program Services for the North Dakota Protection and Advocacy Project** says "ditto" to what the others have stated previously. (#5 Testimony)

**Senator Mathern:** If someone is in immediate peril and you are notified as an agency, can you step in and act for a person as a guardian? **Jim Jacobson:** Yes, can and do. There is a section in the guardianship statutes that is titled "temporary guardianship" and there are times they will take that step; two reasons: There is an immediate jeopardy situation and something has to be done. His agency may act as the petitioner; have at times paid for court visitor for the physician examination. Reluctant to act outside of that temporary guardianship statute because by federal law they are mandated to be expressed wishes advocacy organization. A guardianship is for severe limitation of a person's rights; temporary guardianship does not require a finding of incompetence.

**Senator Judy Lee:** Earlier comments on resources was to clarify the fact that this program would be available (if we move forward) with services for people who don't have resources, but the cost for people who do would be borne by that individual or family. Just clarifying the fact that the state is not going to pay for everybody; if one has the ability to pay, they would be responsible. **Jim Jacobson:** They see that in action right now; do see times where a guardianship is established and that person has resources and a certain percent is allowed to be taken by whoever takes on the guardianship role.

Two final comments: Has an amendment attached to his testimony; the amendment requests a \$40,000 appropriation for interim services while the study is being conducted. They would be extremely happy to lose the argument and go with Mr. Bernhardt's amount.

**Senator Berry:** Major questions for Appropriations will come out; has it been looked at to say if money is available, guardianship is obtained, is this going to save the state money—because that is what folks will listen to. If we normally spend \$XX and now we only have to spend \$X to provide this service . . . **Jim Jacobson:** Thinks that Ms. Conrad's organization study did reference that; doesn't have the study in front of him so can't speak to the specific amounts. Anecdotally can identify the value of that just in the work that he sees. Often times those with chronic mental illness—the effects of their disability can vary. At the times they are more stable the guardian can be a very effective agent for helping them develop an alternative resource plan. Those types of plans do save money; they allow for much less resource intensive types of services when it comes to acute care, pre-emptive types of services that eliminate the need for hospitalization. **Senator Berry:** Agree it sounds intuitively like that would be the case; just curious if there are hard numbers? Are the studies that say this is what we've been spending doing it the way we are doing it, and by doing it this way . . . **Jim Jacobson:** He would have to go back to the studies that have been done; has not read them recently. The stereotypical problem in human resources is you can't evaluate a negative. If services are effective and they work—how do you know what you saved, how do you know what the consequences would have been had that intervention not occurred. **Senator Berry:** But you know what you have been spending without it in place, and then see what you are in place—that might be a working point.

**Senator Judy Lee:** Roger, do you have any comments about when you were involved with those studies over these last decades, were there any observations, because it is difficult to measure a negative—any comment about how that would result in saved resources? **Roger Wetzel:** Had a number of cases that were cited; had cases where people (state hospital, nursing homes) could not be returned home because they were sort of marginal. If they had a guardian to make sure they applied for a home and community based services, saw their doctors, etc. Had cases where people cited people with chronic mental illnesses who were in and out of the emergency rooms and psychiatric units because they went off their medication once they started feeling better. Or didn't renew their prescriptions, or didn't bother to go to doctor appointments. Had a number of anecdotal cases where several thousands of dollars were spent. Gave example of his own mother.

**Sandy Benderwald, Director, Stutsman County Social Services and Vice Chair, County Directors Association** agrees with everything said.

No further testimony in favor; no opposition. Hearing closed.

**Senator Judy Lee:** Committee work following the hearing; the original bill had \$65,275 in there for funding guardianship program enhancement. Not a big number but it is more than is in there right now. This is something that has been discussed almost as long as she has been here. This is one where we really keep kicking the can down the road! The study that Roger Wetzel talked about was extensive and came up with a lot of information.

**Senator Berry:** Have they ever come out with an actual plan; how much money we are spending, how much they think it will save—itemize it and the answer he felt was no, it had never been done. (It was done in 2005) Can we have those numbers—that's what is going to speak to appropriations and speak to the floor. **Senator Judy Lee:** Hard to say what would be saved though; like saying how much money do you save if you don't . . . **Senator Berry:** But we can know how much we are spending now, and then we can know how much we save. If we put \$65,000 into this study, and then know exactly so there would be measures looked at and enact on. Let's collect some definite numbers as best can; if anything will turn a head, that will. If not, just based on what we've heard on floor discussions so far based on health and human service budget—this looks to be another one where they say you want to spend another—whatever, and where if there are measurable things they could look at, thinks that would give us a chance.

**Senator Mathern:** While he thinks this is correct, the response often is "there is no proof" that those individuals that we have measured now to save us money would have literally made incorrect decisions. That's kind of what happens; the method will be okay, we'll have 100 more people receiving guardianship services, and those 100 people will have so many less days in the hospital and so many less days in this—therefore we'll save \$35 million and the response will be we think those 100 people, now that they know about the program, their families would get involved and they wouldn't make those incorrect decisions. So you can't prove that we can save that \$35 million. He would rather either pass the bill with that \$266,000 so they can get to work or do it as a pilot because that then creates the actual data in real people. Even that isn't necessarily going to get a yes vote; take YouthWorks, for example, we started the pilot in Burleigh County and the placement of

people into foster care has gone down (got the data!). So his preference would be to literally put some money in that somebody starts doing something versus hiring a consultant at \$50,000 to \$100,000 who is literally going to come back and tell us—

**Senator Judy Lee:** Let's take a look back at the original bill. Talk about using the developmentally disabled services as the baseline for this and appropriating \$65,275 to do it. We can call it a pilot if you want or whatever. It would be a place to start in our discussion. **Senator Mathern:** Did speak with somebody from the Department of Human Services; kept asking what the original bill about. Someone came to him afterwards and said the original bill was really the department putting together a pilot project and the wording for that wasn't used—but intent of the \$65,000 to actually deliver the service with a certain number of people that they could with \$65,000 and then use the data to help in future sessions. **Senator Judy Lee:** That is what the original bill said; take a look and see what you think. **Senator Mathern:** They just thought—what can they get by this legislative session that would help them develop data while delivering a service where there is a crying need.

**Senator Judy Lee:** Doesn't think a study is needed; it is well studied! **Senator Dever:** The current version with the study and no money, or the contract with a consultant and no money—**Senator Judy Lee:** It would come out of the legislative management study budget. **Senator Dever:** Don't they construct that budget based on the studies that they have before them? Seems silly to spend \$50,000 on a consultant to tell us to spend \$65,000. **Senator Judy Lee:** Except it is like \$772,550 in 2005; SB 2028 was passed and signed by the Governor; it originally had an appropriation of \$772,550 for a comprehensive guardianship services program. The bill was only funded at the level of \$40,000 per biennium. We aren't getting anything moving here. If the study is done after there was already an EXTENSIVE study about it—and can't apply those same dollars to provide the service? That is a bit hypocritical, but that is what we are doing!

**Senator Berry:** One out of five in nursing homes now need services and don't have them. Is there something that can be done to cut down on the people who get to that point. **Senator Mathern:** Think that's part of these studies we have approved already. Doing those to figure out that solution, and we have passed a study resolution to do that so that during the interim 17 legislators are going to get together to figure out how to make sure 1 out of 5 people doesn't end up in this situation—that's ongoing. But until that goes into effect (four years), let's assume they come up with a great plan and have enough money and put it into effect—while that is in operation in four years. Until that four year implementation fully across the state happens, there are 1 out of 5 that are in this situation and that is what this bill is about. **Senator Berry:** If the reason was that we're short on people to do this, where will we get these people? **Senator Judy Lee:** If we pay them, they will come. Some people do it as a volunteer-- **Senator Mathern:** One of the things you've mentioned is a model; he was involved in establishment of the first corporate guardianship program in the state. That's one thing about this model—the Department of Human Services says to their contractee (Catholic Charities) we need these people to have guardians. You go out and find a relative, community member, etc. If not—you are the guardian. They have to establish this process of checking first, that's why it is done for \$5. With that cost there is work done to find those doing this at no cost to the state, and Catholic Charities has a training program to get people in the community to do this. Then it

is only when no one in the family or community will take it on, then they designate a social worker as the guardian. The model includes outreach, to find guardians/volunteers, train volunteers, but the bottom line is there aren't enough volunteers to do it.

**Senator Judy Lee:** There isn't enough money in that either; they have a big golf outing and other fund raisers to pay costs. We are not fully funding the program that we have given Catholic Charities the responsibility to implement. **Senator Berry:** He said they get \$5 and then hire somebody; mentioned about five things they do and thought (can't hear the rest) **Senator Dever:** Agree with Senator Berry's concern about the solution—it seemed to him that when Larry Bernhardt presented his testimony and talked about the different studies that they did a good job of identifying the problem but didn't present the solution. His question is – is the proper structure in place if it was funded? Or would there be benefit to study to look how to improve the delivery of the services? **Senator Berry:** Or to specifically tell them to come back with the solution—we know there is a problem. **Senator Mathern:** Would say they are in the amendments brought from Larry Bernhardt. It's a unified system—the last two pages of his testimony. It is essentially taking the DD model and applying that model to vulnerable adults at the \$266,000 level solves this guardianship problem. It puts it in the realm of the DHS to be in control of the details. Judy Vetter was with another organization other than Catholic Charities that does guardianship. In the last decade there have been more organizations that have come forward and one of those could be the organization that would get the \$266,000. **Senator Dever:** Those dollars represent serving 25 people in the first year and 50 in the second. They said elsewhere there is an estimated 120-220 needing services. **Senator Mathern:** Think the rationale for that is the ramping up, doing this and getting guardians. If you go out west, you could get a social worker for \$X; now a social worker can drive a truck for twice as much. It is not like these people are sort of waiting to pick up a guardian—even a corporate guardian. Thinks there is recognition of the cash developing the personnel to deliver the service. He is fine with that proposal. **Senator Judy Lee:** Thinks it is probably to expect that \$266,000 is going to get through appropriations, but maybe even visit with the people in the department about the possibility of a pilot—should we have someone come down and visit in the morning about whether that is feasible? **Senator Dever:** In one region—

Committee was very open to that suggestion.

**Senator Mathern:** Thinks that has been thought out by the department and that was the original bill. **Senator Dever:** Be looking at the proper amount of dollars to do it right in that one region as opposed to spreading the dollars out to? **Senator Judy Lee:** The original talks about \$65,275 and that is so specific that there has to be a reason why that number was there. Not that she wouldn't love the \$266,000 but don't think we'll get it.

**Senator Berry:** Feels that gives this the best chance of a workable solution. **Senator Judy Lee:** Will contact Carol Olson and see if someone from her department can come down in the morning.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

HB 1199 Discussion  
March 22, 2011  
15850

Conference Committee

Committee Clerk Signature



**Minutes:**

See attached amendment

**Chairman Judy Lee** opened the discussion on HB 1199.

**Senator Mathern:** What was the intent of the original bill?

**Jan Engen, Director for Aging Services Division, Department of Human Services (DHS):** DHS did not introduce the bill; she just learned this morning that she believes there was work by the representatives of the Silver Hair Education Assembly that perhaps had some input into the introduction of the bill. Believes the \$\$ amount would be in addition to--they currently have \$40,000 in the DHS budget for guardianship services for a two year period. The additional money was to try to add through that by doing a very limited pilot that would serve 16 individuals by reimbursing them a fee of \$500 to be guardians; in addition to out of the \$40,000 to pay for court costs and things related to setting up a guardianship. These would be for individuals that would have a diagnosed mental illness, TBI, or elderly individuals 60 years and over. Developmentally disabled (DD) have a guardianship program that is administered separately from what they do, so if they a guardianship request for someone DD, they would be referred over to the appropriate agency to handle that. This bill would be for those three areas referred to.

**Senator Mathern:** How would you see the pilot project structured? One of the concerns the committee would have is that it be structured to provide further data as to the need for this and what the real costs are. If this were to be passed as originally introduced, how would you structure the pilot project? **Jan Engen:** Sees it being structured the way they are currently doing in within aging services division. They currently have a staff person that is nationally certified guardian; when calls come in they are screened demographic information, the reason for applying for guardianship, etc. In the screening process she is going to see if they meet the three criteria; do have a protocol set up for that. The 16 people selected—questions how they will be selected—do provide more than 16 annually and do spend \$40,000 for court costs. Thinks they would continue to do what they are doing, but with the \$500 it might help defray the expenses that guardians incur during the year for travel, activities for the ward in the community, etc.

**Senator Mathern:** Supportive of the program, but are you saying there is no structure for a pilot and that it is first come, first served? **Jan Engen:** At this point in time it is; could structure that and do screen individuals and collect information. **Senator Mathern:** With this \$64,000 (for a two year period) you would collect the same kind of data, offer the

services and then end it once you reach your spending of the money—is that what you are saying? **Jan Engen:** The data is the first contact; origin of the request (individual or agency), name and age of the proposed ward, the reason for the request (TBI, mental illness, over 60), who is the proposed guardian going to be. Based on the information, the screening and interview process with the person making the request and talking to the proposed guardian. The \$500 that is built into this budget would go to guardian to help defray expenses. Right at this point in time the best we can do is first come, first served. The \$40,000 would be used until it was gone; we don't know until talking to the guardian if the \$500 is necessary. Some will feel it is their obligation and not need the \$500, but others may need it to assist the ward.

**Senator Mathern:** History of the need and the studies done; if we had \$65,000 would you put it into further study or into these services you have? **Jan Engen:** It would be into direct services—providing guardianship to individuals in need. **Senator Mathern:** So you don't see a need for the study, but a need for the service? (Yes)

**Senator Judy Lee:** Committee discussed how this issue has already been studied; in 2005 there was a very comprehensive study with a lot of stakeholders. Point is we just keep kicking it down the road. We want to do what is right so thank you for coming to talk about this. How do we justify to Appropriations to be able to put this into direct services and not another study? We would like some idea for amendments after you hear some of our discussion.

**Senator Uglem:** On the original bill--it is for those ineligible for DD case management. Does that mean opening the program to different people who don't qualify right now? **Jan Engen:** Yes, the three criteria are the diagnosed mental illness, TBI and individual age 60 and older. If they already have the service available and qualify for the DD guardianship program they would not be eligible. **Senator Uglem:** So this would be a new program, new group of people that could be serviced? **Jan Engen:** Currently they are providing the service through the \$40,000 in the biennium that is in their budget. That provides the services but not the assistance to the guardian for out of pocket expenses. That is what this would include.

**Senator Judy Lee:** Do you have more people that need financial assistance with the petitioning process than the \$40,000 covers? **Jan Engen:** Would say yes; right now are maxed out for the year. Have sufficient process, sufficient applications and generally set an upper limit of providing \$2500 but it could go more depending on the circumstances and if somebody contests the guardianship. In some cases they pay less, in some more. Not often they pay more as they are frugal to make the dollars stretch. **Senator Judy Lee:** Do you need more additional funds to handle the petitioning that now is covered by the \$40,000; so what you are looking for is some support for the guardians who are bearing personal out of pocket costs? **Jan Engen:** Believes this is the second biennium that the program has been in process, and during the first time it went through they did slightly go over budget. Right now in March they are close to running out so will have to put people on a waiting list to see how the finances look. **Senator Judy Lee:** So would you be better off if we added the dollars and said it could also be used for support of services by guardians but allow the latitude to use them for petitioning if necessary? Think about it and come



back to us—is that fine with the committee? We would like the dollars to be used where most effective.

**Senator Mathern:** He would also encourage the department to think about how it structurally adds data; if it is just adding to the program he is afraid they will never get this through. The House passed something that sounds like a study, should have something in the new funding that some “ingredients”; with this additional money if the data could be structured in a different way to be used by the next legislative session to determine other needs or something. Just a suggestion.

**Senator Judy Lee:** You can consider that in your staff discussion as well. **Jan Engen:** They would be most happy to do that.

**Senator Dever:** Curious if guardianship services to vulnerable adults who are eligible for DD case management is adequately funded. **Jan Engen:** Doesn't feel that she has enough information to comment on that because it isn't her department. **Senator Judy Lee:** JoAnne Hoesel might be the one to ask for that. Would you like her to address that also? Is that possible—we are trying to see if there is a parallel, are the DD guardianships adequately funded and how do we look at that as a model, how do the two compare.

Set this aside for now; will take it up tomorrow.

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Human Services Committee Red River Room, State Capitol

Action on HB 1199  
March 23, 2011  
15884

Conference Committee

Committee Clerk Signature

*Anderson*

### Minutes:

See attachments

**Chairman Judy Lee** opened the discussion on HB 1199.

**Jan Engen** appeared before the committee again and offered proposed amendments (#1) and budget request for the Guardianship Program (#2) For the first year they already have \$40,000 of guardianship establishment funds in their current budget. This amendment would add an additional \$8,000 which would be used for the guardianship fees at \$500 per person for 16 individuals. The second year the amendment asks for an additional \$40,000 for 16 individuals and \$16,000 which would cover the guardian fees for 32; the original 16 people and an additional 16.

Regarding the service and what the pilot would do: currently in this biennium they are at 27 guardianships through March of this year. They are hoping that they have sufficient funding to meet all of those needs. The average petitioning costs run from about \$1,100 to the full \$2,500, contingent that there are no contested guardianships which cost more. The total request for the establishment fund would be \$80,000 for this biennium. (Reviewed attachment #2)

**Senator Mathern:** Why not just take the present program and extend it to these vulnerable adults? The \$500 deal seems like a new way of doing things versus the program in place for DD. Very supportive of moving \$64,000 in there, but why not use the present model for this new group of people? **Jan Engen:** Not certain she understands the question; the current system in place is \$40,000 for a two year period. That goes directly for the petitioning costs. **Senator Judy Lee:** We have a model in place for the DD population—is it not practical to look at a similar model for this population? **Senator Mathern:** So we would use the \$40,000 plus the \$64,000 and use it the way it is set up for the DD model versus this \$500 process. **Jan Engen:** Without looking into the model you are referencing, she could not speak enough to that to give you an answer. If you are talking about giving so much per day, she doesn't believe the dollars they have in this proposal would support that kind of model. **Senator Mathern:** What if we took the same dollars and use that model, and then equate that to how many persons being served? It would seem to him that it would work. Maybe there is no connection between this program and the DD guardianship program—you separate these so dramatically that the method of payment for DD program is not associated at all with the method of payment for the vulnerable adult guardianship program. They are totally separate in your department? (Yes)

**Carol Olson, Director, Department of Human Services:** Looking for a quick answer to your question; thinks there is a definite cost factor involved and the amount of money is quite different that goes into the DD formula than it would in this one. We are checking on that for you.

**Senator Mathern:** In this amendment, what would be the rationale for placing the word "may" instead of "must"? It would seem that "must" would move towards a pretty clear direction that the legislature is saying vulnerable adults have as great a concern as do persons with intellectual disabilities. Wondering why you would change that as the amendment suggests. **Senator Judy Lee:** Also in testimony on 1199 from Mr. Bernhardt it talks about guardianship services and what costs there are; may be helpful reference. **Senator Dever:** That entire section is existing law except for the change from "must" to "may", so the program already exists. **Senator Mathern:** Except we'd be adding with Section 2 (new wording) new money into the carrying out of Section 1. **Senator Judy Lee:** Guesses that there isn't enough money in this to use the base unit funding level at the same level as the DD population. We might be looking at the same basic principals as in the DD model, but aren't going to be able to use the same dollar amounts because the dollars aren't there? **Carol Olson:** Believe that would be correct. **Senator Judy Lee:** So the "may" allows it to be permissive in the sense there isn't enough money—if we follow the DD model it would cover fewer people. (Correct) Think this is a baby step into the pool.

**Senator Mathern:** Seems to him under their rule making authority, they could limit it to people over sixty, TBI or severe mental illness. It would appear they could make sure that the amount of money matches the eligibility. May be a minor thing.

**Paul Kramer, DHS:** The proposal out here would make the systems comparable, just with different rates. The DD one pays for petitioning and then pays a daily rate for guardianship that's around \$5.88. The difference between the \$5.88 and \$1.37 (proposed) is the DD one includes a case management component, which this one wouldn't. Otherwise the systems are going to be similar.

**Senator Mathern:** You have already identified a different method, eliminating case management, limiting those three categories. Why wouldn't you put that in the rules so we have a clear description of this program? **Paul Kramer:** Administrative rules? The amendment proposed is for the Century Code, not administrative rules. If there is a component that would be implemented through Administrative rules, that would be developed through the committee and not show up in this bill. **Senator Mathern:** This bill refers to rules in the first section, second to last line. **Paul Kramer:** That would be the Administrative rules that the department would adopt and often don't put them into the Century Code; the Code would refer to the Department adopting rules. **Senator Mathern:** Why put "may" instead of "shall" so that it is in Administrative code? **Paul Kramer:** What they did with the amendment took it back and reversed the hog house that they had done. It is putting it back to the form introduced in. That wasn't their call to write it that way.

**Senator Judy Lee:** How much does it cost to develop rules? Assume that you are going to continue to do the things you do in order to determine appropriate policy. Would hope this program would grow into one that needs rules; not opposed to Administrative rules and agree with what Senator Mathern is saying in principal. But it could cost \$100,000 to

develop the rules, seems to her. To the committee—really don't want to mandate them adopting rules in the next biennium for \$55,000. This is intended to be kind of a pilot; she'd like to have a little flexibility and has confidence that it will be done appropriately. Maybe can demonstrate some good things coming from this that will result in it being broadened and be perfectly appropriate at that time to include Administrative rules. (No problems with that from the department point of view)

**Senator Dever:** His perception of the guardian's responsibility has to do with limited power of attorney, and thinks they've gone beyond that by doing things for them around the house, getting groceries, etc. Just wondering if there is any kind of a scope of their responsibility or is that determined individually? **Jan Engen:** The division has developed a guardianship handbook that is provided to all prospective guardians that outlines roles and responsibilities; things they have to do. Talks about what all of this means so they have an idea what they are getting into. There are some court required things that guardians must do, but it depends on the individual guardian how much of themselves they want to put into being a guardian. **Senator Dever:** He sits on the board of the Volunteer Caregivers Exchange; wondering if that kind of a program could be considered to add to that guardianship responsibility. **Jan Engen:** She has previous experience working in the volunteer world; that would be up to the organization they belong to should they choose to focus on doing something like that. Individual choice and a big responsibility. (Further discussion on groups that could enhance quality of life for these individuals) If the need is there, someone must respond to that; it may be some medical decision to be made. It impacts the guardian's life and it's a commitment. **Senator Judy Lee:** You could encourage groups like that to participate; that would reduce the cost to the department and possibly service more people.

**Senator Mathern:** Seems like we could pass this bill with just Section 2; don't know what would be easier for getting it through. If we took this "hog house" amendment and adopted it without Section 1. Section 1 is this question about "may" or "must"; it is already in law. Also fine with both. **Senator Judy Lee:** Think we need to say what it is used for or it won't go anywhere, so certain comfort level with Section 1 being in there. **Senator Berry:** Would agree; the more specific with where money is going, what it is being spent on gives the bill a much better chance. **Senator Dever:** Think the deletion of Section 1 would only work if you bumped the dollars in Section 2. **Senator Mathern:** Find it interesting that they have figured out a way to deal with that lower amount of money, with Section 1 already in the law and could do the same if we add more money.

**Senator Judy Lee:** We have an amendment brought to us by the people in the department who administer the program and know what the needs of the people are. They think they can live with this; she likes to listen to what they have to say.

**Senator Dever:** Move to adopt the amendment; second by **Senator Berry**. Motion carried 5-0-0. (Vote 1) **Senator Mathern:** Move a Do Pass as amended and rerefer to Appropriations Committee; second by **Senator Berry**. Motion carried 5-0-0 (Vote 2) **Senator Judy Lee** will carry the bill.

March 23, 2011

*Q3*  
*3-23-11*

**PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1199**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-06-24 of the North Dakota Century Code, relating to guardianship services; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-24. Guardianship services.**

The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system ~~must~~ may include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians. The department ~~shall~~ may adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

Date: 3-23-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1199

Senate HUMAN SERVICES

Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0021.03001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Sen. Dever Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mather n	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3.23.2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1199

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0021.03001 Title 04000

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. J. Lee

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

**REPORT OF STANDING COMMITTEE**

**HB 1199, as reengrossed: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1199 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-06-24 of the North Dakota Century Code, relating to guardianship services; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-24. Guardianship services.**

The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system ~~must~~may include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians. The department ~~shall~~may adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly



2011 SENATE APPROPRIATIONS

HB 1199

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1199  
03-30-11  
Job # 16178

Conference Committee

Committee Clerk Signature

### Explanation or reason for introduction of bill/resolution:

A BILL to provide a study of guardianship services for vulnerable adults in the state.

### Minutes:

No "attached testimony."

**Chairman Holmberg** called the committee to order on HB 1199. **Tad H. Torgerson, OMB,** and **Sara Chamberlin, Legislative Council** also present.

**Representative Keiser, District 47,** introduced the bill; short and simple bill from the Silver Haired Assembly. They meet every year and they bring forward their number one issue, ask a group of legislators to sign on and bring forward. Deals with senior guardianship services, although would be for anyone needing guardianship. This group has a grave concern with this issue; number one issue by a great margin. Does have an appropriation for \$64,000; and is a very permissive bill. It reads Department of Human Services "may" create and coordinate a unified system for the provision of guardianship services, etc. A little bit of background--the HSD, he believes, brought forward legislation and had in their budget a couple of sessions ago, a significant appropriation, believes around \$400,000, for the establishment of guardianship services. The legislature was very uncomfortable with that at that time, for whatever reasons. That issue has not gone away, they would like very much for the legislature to consider looking at this issue, developing a long term plan for the people in North Dakota who are currently under and in the future will be under guardianship services. The House supported it; assume the policy committee supported it also.

**Chairman Holmberg:** The bill was introduced, had a \$65,000+ fiscal note, then it went to House appropriations and they reduced that to \$50,000 or did your committee reduce it? There was money and now we have a form with no money. **Representative Keiser:** Was not involved in that process; but believe the House committee reduced it a bit; the policy committee reduced the appropriation. It was referred to House Appropriations, they took the money out and then assume that someone in the Senate put the money back in. **Chairman Holmberg:** Our policy committee put it back in.

**Senator Krebsbach:** Certainly in support of what's being looked at; do want to check on a bill/resolution that came from the Senate and was done because of the Chief Justice of the Supreme Court requesting that a study be made in this area. There's a lot of problems with this whole area in how it is being delivered, there are a number of ways services are being delivered, and are we ready for Human Service to develop a program without having a study?

**Rep. Keiser:** I do not see the two issues in conflict. Do know the Chief Justice as spokesman for the court system has grave concern on this issue. They are seeing it in the courts and it can happen at any level. Mickey Rooney's testimony before Congress—he is a relatively wealthy individual and he had tremendous problems in the guardianship program; his children were attempting to put him under so he was recently invited to testify before Congress. Yes, we could do a study; the Human Services came forward asking for money to put a program in place and this is a modest effort to give them, what I believe, the opportunity to develop a concept which is what hopefully a study would do. Do not see them as mutually exclusive, or in conflict.

**Chairman Holmberg:** Anyone else testifying in 1199? We will close the hearing on 1199. Let's mull this over.

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1199  
April 5, 2011  
Job # 16364

Conference Committee

Committee Clerk Signature

*Rose Lanning*

### Explanation or reason for introduction of bill/resolution:

A committee vote on HB 1199 which provides a study of guardianship services for vulnerable adults in the state.

### Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee hearing to order on HB 1199. This was for the uniform system. We have a number of you who have really been involved in the Human Service area much more than some others have. Any comments or feelings for you folks on 1199?

**Senator Kilzer:** It does keep saying "may" instead of "shall" or "must" or something. So if we want to kick the can down the road, somebody else can decide whether or not to choose this one or not.

**Senator Kilzer moved Do Pass on HB 1199**  
**Senator Erbele seconded.**

**A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0**

**The bill goes back to Human Services and Senator Judy Lee will carry the bill.**

Date: 4.5.11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1199

Senate APPROPRIATIONS Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Kilzer Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Back to Human S. J. Lee

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

**REPORT OF STANDING COMMITTEE**

**HB 1199, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1199, as amended, was placed on the Fourteenth order on the calendar.**

2011 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1199

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
April 13, 2011  
Job # 16565

Conference Committee

Committee Clerk Signature *Vicky Crathree*

**Minutes:**

See Attachments #1 - #4

**Rep. Pietsch:** Opened the conference committee meeting on SB 1199. All conference committee members are present.

**Sen. Judy Lee:** (Handed out two e-mails. See attachments #1 and #2.)

**Sen. Berry:** The bill was changed to a study and funding at \$50,000. We felt that the \$65,000 that was put back in could be used towards guardianships as they are now.

**Sen. Lee:** We discussed that we have had a lot of studies and 2005 was the last one and was quite detailed and indicated a need for the guardianships. Rather than spending the money on the study we should put the money on developing a guardianships for people who are seriously mentally ill, have traumatic brain injury, over the age of 60 and likely to have dementia and do not have anyone to make decisions for them. The court is petitioning for guardianship services that we don't have any provision made to provide guardians for those people. The department worked out a possible way to do that. There is a pressing need for the financial needs to be administered for these people. Look at scope of SB 2079 study. The study costs would be \$100,000 for employee compensation study and \$250,000 for correctional facility review. The legislative management budget has a significant piece of it that is just for studies. It is seldom used much. Maybe we can consider both parts.

**Rep. Anderson:** Can we view what they recommended on those studies?

**Sen. Lee:** I can get those provided for us.

**Rep. Anderson:** I'd like to see what they recommended to do before we fund anything.

**Sen. Mathern:** I think you will find in the study that there is a recommendation for an increase for guardianship services for our state at a funding level much higher than any of these bills before us. My concern is we literally have so many studies that everybody has concluded there is a need and the challenge is funding the need. These amendments are adopted by the Finance and Tax Committee and I wonder if that is a mistake.



**Rep. Pietsch:** These are in fact the proposed Senate amendments? I noticed that and questioned it myself.

**Sen. Mathern:** Yes. The version that passed the Senate and the House doesn't concur with is 11.0021.04000?

**Rep. Pietsch:** That is what we have in our files.

**Sen. Berry:** The issue is that, the need is there and the funding is not. We felt we should get something started whether in a pilot or something else.

**Rep. Pietsch:** When we as a committee decide we like a particular program and want to fund it, it goes to our appropriations. Did yours go through your appropriations and they said, fine?

**Sen. Berry:** Yes.

**Rep. Pietsch:** We as a policy committee did the study with no money in.

**Sen. Mathern:** Did you do that because you literally wanted to know more or you felt the only way to get the concept through to the Senate of a need was to take the money out? I don't know what the intent was.

**Rep. Anderson:** How is this money going to be used and how many it is going to help and who decides what goes where? That is my issue.

**Sen. Lee:** I can bring my notes next time, but it shows what the proposal was and where we were going with that small amount of money that is in here. I'm sure the department can provide that information for the committee.

**Rep. Pietsch:** I see some department people here. Would one of you like to answer that for us?

**Paul Kramer:** From the DHS. Answer it in the way we are going to provide something or where it is going to go? What Sen. Lee is referring to is that in the budget now is the funding for 16 for the establishment, but nothing to pay them the daily fee. The \$64,000 adds in 16 more and pays for their daily fees for all 32.

**Sen. Mathern:** When you say bring in 16 more do you mean vulnerable adults that need guardianship and 32 vulnerable adults that could be put on your standard guardianship so that the providers of that guardianship would get paid a monthly fee for 24 months?

**Lynn Jacobson:** Director of Elder Rights and handles the guardianship program for ND. We have a small amount of money in the budget to help establish guardianships which pays for attorneys who petitions the guardian (inaudible) who by law has to be another attorney, and the court visitor by law has to be a nurse or a social worker. Those three people get their information together and bring it to the Judge and then the Judge makes the decision. We currently pay for 16 of those per year. \$64,000 would be that each person that receives

the guardianship establishment services, that guardian would receive one time per year \$500 allotment for expenses like gas, long distance telephone calls and copying, etc. They have to submit records to the court every so often about what they are doing with their ward and any other kind of expenses.

**Sen. Lee:** A guardian would take a person to a doctor appointment and at this time paying out of their own pocket which could cause a financial burden.

**Lynn:** You are right.

**Mathern:** You imply these would be all volunteer guardians. Can you see using this money to pay someone if you couldn't find a corporate guardian volunteer?

**Lynn:** Absolutely. We have begged some entities to take the guardianship program and no one would.

**Rep. Kilichowski:** Do you have all the rules and administrative duties for the guardianship?

**Lynn:** We have laws of ND guardianship, standards that have been established based on the national standards. I am the only one in the department that is a nationally certified guardian under the National Guardianship Association. When we offer the \$500 we are not asking for a penny by penny accounting, but ask for a report of what they are doing.

**Rep. Kilichowski:** The \$64,000 will do a total of 32 with the money you have. Where do you get your referrals and how many a year?

**Lynn:** The referrals primarily come from chronically mentally ill case managers at the human service centers, county social service boards, and discharged planners. I probably get 5-6 a week. North Dakota has many good laws that we can use instead of guardianship. We have the informed consent law, co-signatures on a bank, and power of attorneys. I approve 20% of the calls I get for guardianship.

**Mathern:** If we were to study guardianships, what would we study?

**Lynn:** Studies are a waste of money. We know what the problem is. If we want people to stay home, we need protections for them. I get an exploitation call once a week from western ND.

**Pietsch:** How many dollars do you have in the budget?

**Lynn:** \$20,000 a year.

**Pietsch:** That is strictly for guardianship and your administrative costs are covered elsewhere. You are not federally matched for the \$20,000?

**Lynn:** That is correct. No we do not have federal match.

**Sen. Lee:** Would you agree that the broader area of other things going on with vulnerable adults and the whole process of taking care of those needs and the legal structure for that needs studying?

**Lynn:** Exactly. SB 2079 is looking at who will be the guardian and what is the public administrator's role in guardianship. Every county has the opportunity to have a public guardian. My request is to fund those guardianships at \$500 a head for persons who have stepped up and said they will do it.

**Rep. Pietsch:** We are adjourned for the day.

(Two more handouts given to committee after the meeting. See attachments #3 and #4.)

2011 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1199

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
April 14, 2011  
Job 16584

Conference Committee

Committee Clerk Signature

*Vicky Crabtree*

## Minutes:

You may make reference to "attached testimony."

**Rep. Pietsch:** Called the conference committee meeting to order on HB 1199. Roll call taken all members present. The study the House put in would be an outside consultant. No one is arguing that the guardianship program is needed. Is it our place to increase the budget?

**Rep. Berry:** Looking at some of the testimony, it seems that the interim studies were in 1988, 1996 and 2004. In the 2005 session they had initially asked for an appropriation of almost \$800,000 for a comprehensive guardianship program which expunged to a level of \$40,000 per biennium. Some of the reasons for guardianship are aging, dementia and Alzheimer's and the mentally ill. The mentally ill are now staying at home so the need is there. The need is there. I like the idea that the study be broad and I'd like the study to look at the elders. Maybe we could address the budget.

**Sen. Judy Lee:** The finance and tax reference on the other one. Legislative Council had incorrectly labeled an amendment and it has been corrected.

**Rep. Anderson:** There is money set aside in the budget in legislative management available for a study.

**Sen. Berry:** My understanding is that last year it was about \$200,000 the fund in legislative management for studies and not all used. So, that would be a source we could use.

**Sen. Lee:** Could we have a definition of corporate guardianship?

**Lynn Jacobson:** From the DHS. The corporate guardianship is an entity that does more than one or two guardians. Catholic Family Services which is a Catholic charity that is a corporate guardianship. And we have Guardian and Protective Services and there is one out of Jamestown called DKK which is also a corporate guardianship and that is a business.

**Sen. Mathern:** I move that the House Accede to the Senate Amendments.

**Sen. Lee:** Second.

**Rep. Anderson:** I'm concerned this won't get by appropriations at \$64,000 and also a study.

**Rep. Pietsch:** They are actually doing what is in law. And you changed "must" to "may".

**Sen. Mathern:** The Senate amendment does not have a study in this bill. However the SB 2079 that we passed does have a study in it. The bill before us is trying to meet the immediate need to for some of these vulnerable adults who need the services.

**VOTE: 4 yes 2 n 0 absent**

**Motion Failed**

**Sen. Lee:** I think both the House and Senate ideas are really good. I think the study is important. I see this as a blended study between 1199 and 2079. I'd like to throw out the idea of moving forward with this consultant and having a professional assistant with the study of the court involvement.

**Rep. Pietsch:** There was a question of was this a priority item within the department? The internal studies show that there is more need than they have money to cover. We asked why not in the budget?

**Sen. Lee:** What was the answer?

**Rep. Pietsch:** It wasn't the top priority and there wasn't time to change things.

**Sen. Lee:** If they are limited to 100% budget, they really don't have any place in that budget that they can put a significant extension of a program that right now doesn't exist. We are here on policy and if we decide it is a priority it is more important than the department deciding it is a priority.

**Rep. Anderson:** We have had three previous studies and what have we gained from them and what was the end result of those studies?

**Sen. Lee:** We just keep kicking the can down the road because we don't want to put the money into doing what they tell us we have to do. That's the truth. Every study we do we spend money on a consultant or we do it with an interim committee. We figure out what we ought to do and then we don't do it because we have to budget for it.

**Rep. Anderson:** I think if you have an idea what you should do, you should do it or you are wasting your time and money.

**Sen. Berry:** Looking at study from 1988. The conclusion they came to was the most common reason why the elderly did not have a guardian because there are no funds to pay for guardianship proceedings. Counties don't have public administrators so there is no one available to serve as a guardian. There was over 150 agencies asked if there was a need

for corporate guardianships and about 90 said there was a definite need. In 1996 and 2004 the studies thought there was still a need for guardianships.

**Sen. Pietsch:** Maybe we need an outside consultant. You agree with what the House has that we need a study, but want to add an appropriation?

**Sen. Berry:** Yes.

**Sen. Lee:** We agree with the study, but feel there needs to be a start for those in need.

**Rep. Pietsch:** The brief discussions I have had is that it will die in the House with the appropriations request.

**Sen. Berry:** Do you see any amount appropriated that would pass in the House?

**Rep. Pietsch:** I think at this point with the 2.6 billion dollar human services budget, the \$60,000 would be a pittance and could find it in their budget if they really wanted it. That is the approach that appropriations generally has.

**Sen. Lee:** I expect them to tell us no, but if we put it together we would have the opportunity to discuss it in both houses.

**Rep. Pietsch:** Meeting adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
April 15  
Job #16653

Conference Committee

Committee Clerk Signature *Vicky Crabtree*

**Minutes:**

See Attachment #1

**Rep. Pietsch:** Called the conference committee to order on HB 1199. Roll call was taken and all members were present. I checked with House Appropriations as far as the support is concerned and we do not have their support. We all agree that the study is a must. The item we need to iron out is whether there should be an increase in the line item by \$64,000.

**Sen. Berry:** I passed out amendments (See Attachment #1). We liked the idea of the study being done by an outside source. We feel strongly that the \$64,000 for guardianship fees should be in here. \$8,000 for year one and \$56,000 for year two and I'd like to see something get started. It can be a one-time and not an on-going appropriation. I move the amendment 11.0021.03002.

**Sen. Judy Lee:** Second.

**Sen. Mathern:** I did check with the department and they did ask for this and it was in their list of requests to the Governor's office. It is listed as one of the OARs. It was not funded. I would like to support this amendment.

**Rep. Anderson:** I'll support the amendment, but it will be a tough push on the House floor. We have had many studies and they show the need. The court systems don't handle it consistently from one county to the next. We will need some consistency there. We will have to an administrator that doesn't have an interest in either the guardian or the ward to make sure it is done right.

**Sen. Lee:** In some of our public facilities such as our state hospital there are people who might be individuals with development disabilities are eligible for that guardianship program. We have that as a result of the ARP law suit. They can't discharge somebody there who is not covered by the DD program if they are seriously mentally ill or whatever if they don't have a guardian available for the discharge. There are grave concerns for people who have been financially abused or neglected. If there isn't enough support from the House, at least allow it to come back to the conference committee so we don't lose that study.



**Rep. Anderson:** I agree with Sen. Lee if we don't have a study that looks at the whole process, two years down the road we will be doing the same thing we are doing here, but it might be a \$128,000. It won't solve the problem.

Sen. Berry: I think the study is important, but I'm confident in your ability on the floor.

**Rep. Pietsch:** I heard in the conversation here that we could have it as a one-time spending and that would call for an amendment on here. There has been discussion either here or outside on decreasing the \$64,000. Does anyone have anything on that? There was discussion on the \$500 annually.

**Sen. Lee:** I would prefer the \$64,000 number and can you ask Paul if it would just be the guardian fees. The guardian fees for year one and two, would that be \$8,000 each year for a total of \$16,000?

**Paul Kramer:** With the Dept. of Human Services.

**Rep. Pietsch:** I didn't hear my approval for bring you up, but that is alright.

**Paul Kramer:** If you have figure 16 establishments at \$500 a year, \$16,000 for a biennium.

**Sen. Lee:** I would like to discuss this amendment.

**Rep. Pietsch:** On your motion, it is as printed and not with exceptions.

Sen. Lee: If you would be more comfortable with an addition of a sentence that it indicates that it is one-time funding, I would be receptive to that if that made the \$64,000 more palatable to everybody.

**Rep. Pietsch:** It might be the statement I need on the floor.

**Sen. Berry:** I'd have no problem with added that as a one-time.

**Sen. Mathern:** It is drafted in such a manner that it states a one-time funding. If you need this for a psychological process to give some assurance, I don't have a problem with adding the language is fine. My concern is that we have the wording so that someone doesn't look at this at the end of the study and says, we have a law in place that says you can only do this once. I think that this appropriation is not meant to be continuing appropriation or something like that.

**Steven Podoll:** Legislative intern. I'm picturing a statement of legislative. It is the intent of the 62<sup>nd</sup> legislative assembly that this will be a one-time appropriation and then a clause after that, pending the outcome of the interim study.

**Rep. Pietsch:** It is not an interim study. We are asking the Legislative Management to hire a consultant to do the study.

**Rep. Kilichowski:** Can we just put a sunset on it?

**Sen. Lee:** It is already there with the date. I appreciate what the intern is saying, but we don't need to get that complicated. If we do something similar to what Sen. Mathern suggested, that it not be considered an automatic on-going appropriation.

**Sen. Mathern:** I just spoke with Mr. Kramer and he suggested some wording noting that the OMB does not consider this in the base budget going forward. That is the way this is generally handled. Mr. Kramer could probably enlighten of his experience with Legislative Council and the DHS and OMB could give us the wording if we just got him up to the podium right now.

**Rep. Pietsch:** He could discuss it with our intern. We may not want to do our final vote until we see how it is going to be or do you want to vote with the assumption that it will be ok? Do we want another meeting?

**Rep. Anderson:** Can we put, there is a one-time appropriation out of the money?

**Sen. Lee:** We end up with the same concern that was expressed earlier about it suggesting it might not be able to do it again.

**Rep. Anderson:** If we do a good enough job in the study we won't have a problem. We need a study to go after what we need to know.

**Sen. Berry:** I think we are all in agreement that we need a good study. The intent is that the money is for this next biennium. Waiting to see it in writing is fine with me.

**Rep. Pietsch:** One more thing we need to agree on. Mr. Kramer stated the figure would be \$16,000 if there was \$500 annually. Do we want to carry on with the \$64,000 or change it to \$16,000 or \$32,000?

**Sen. Lee:** We have a motion and have to consider the motion. I suppose we need to further amend. (Microphone not on and inaudible.)

**Rep. Pietsch:** I think Sen. Berry stated to further amend.

**VOTE: 5 y 1 n 0 absent**  
**Motion Carried**

Meeting adjourned

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1199  
April 18, 2011  
Job #16717

Conference Committee

Committee Clerk Signature *Vicky Crabtree*

**Minutes:**

See attachment #1

**Rep. Pietsch:** Called the conference committee hearing to order on HB 1199. Roll call showed all members present. (See Attachment #1.) Asked Sen. Berry if amendment was the same they voted on before.

**Sen. Berry:** Yes. I move that the Senate recede from their amendments as on page 1429 the House Journal and page 857 of the Senate Journal and the re-engrossed HB 1199 be amended.

**Rep. Kilichowski:** Second.

**Rep. Pietsch:** We are talking about the 3000 version?

**Sen. Berry:** That is correct.

**VOTE: 5 y 1 n 0 absent**  
**Motion Carried**

**Bill Carriers: Rep. Pietsch and Sen. Berry**

Meeting adjourned



April 18, 2011

VK  
4/18/11

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1199

That the Senate recede from its amendments as printed on page 1429 of the House Journal and page 857 of the Senate Journal and that Reengrossed House Bill No. 1199 be amended as follows:

Page 1, line 2, after "state" insert "; and to provide an appropriation"

Page 1, after line 14, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is to be considered one-time funding and is not considered to be base funding for the 2013-15 biennium."

Renumber accordingly



# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Human Services

Bill/Resolution No. 1199 as (re) engrossed

Date: 4-18-11

Roll Call Vote #: 1

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1429-

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1199 was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Berry Seconded by: Rep. Kilichowski

Representatives			Yes	No				Yes	No
<u>Pietsch</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<u>BERRY</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>ANDERSON</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<u>J. Lee</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>Kilichowski</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<u>Mather</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier Rep. Pietsch Senate Carrier Sen. Berry

LC Number 11.0021 . 03003 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1199, as reengrossed:** Your conference committee (Sens. Berry, J. Lee, Mathern and Reps. Pietsch, Anderson, Kilichowski) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1429, adopt amendments as follows, and place HB 1199 on the Seventh order:

That the Senate recede from its amendments as printed on page 1429 of the House Journal and page 857 of the Senate Journal and that Reengrossed House Bill No. 1199 be amended as follows:

Page 1, line 2, after "state" insert "; and to provide an appropriation"

Page 1, after line 14, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is to be considered one-time funding and is not considered to be base funding for the 2013-15 biennium."

Renumber accordingly

Reengrossed HB 1199 was placed on the Seventh order of business on the calendar.



2011 TESTIMONY

HB 1199



SALLY HOLEWA  
STATE COURT ADMINISTRATOR

State of North Dakota  
OFFICE OF STATE COURT ADMINISTRATOR

#1

SUPREME COURT  
Judicial Wing, 1st Floor  
600 E Boulevard Ave Dept 180  
Bismarck, ND 58505-0530  
701: (701) 328-4216  
Fax: (701) 328-2092

TO: Rep. Robin Weisz, Chair, House Human Services Committee  
FROM: Sally Holewa, State Court Administrator <sup>gsk</sup>  
RE: Court-Appointed Guardians (HB 1199)  
DATE: January 31, 2011

The Committee has requested information on how many guardians are appointed by the court in a given year. From 2008 through 2010, there were 933 new adult guardianship or conservatorship cases filed. Guardianships and conservatorships are closely-related court actions. A guardian has authority over the person while a conservator has authority over the estate of the person. In most cases, the guardian is also given conservatorship powers, but there are instances where a conservator is appointed instead of a guardian or may be appointed separately from the guardian for a variety of reasons. The numbers below represent both guardianships and conservatorships filed in North Dakota during the years indicated. They do not include guardians or conservators appointed for minor children.

Guardianship and conservatorship cases are typically active for several years. During this time, the guardian or conservator must file certain documents on an annual basis and may periodically make application to the court to dispose of the ward's or conservatee's property or appear before the court to explain their accounting. Because the cases continue beyond the year they are initiated, it is useful to consider how many cases are active during a given year. I have included that number in the final column of the chart below.

Please contact me if you have further questions or would like more information.

Guardianship and Conservatorship Cases 2008-2010			
Year	New Filings	Continuing Cases	Total Cases with Activity Occurring Within the Year
2008	285	1,342	1,627
2009	325	1,267	1,592
2010	323	2,038	1,715

#1

Testimony of Judy Vetter,  
President of the Guardianship Association of North Dakota  
And  
Administrator of Guardian and Protective Services, Inc.  
January 26, 2011

Regarding House Bill Number 1199 on Guardianship Services.

Chairman Weisz and Committee Members of the House and Human Services Committee:

My name is Judy Vetter, I am the President of the Guardianship Association of North Dakota and the Administrator of Guardian and Protective Services, Inc. I want to thank you for the opportunity to be here today to testify on behalf of House Bill 1199.

I have been working in the field of adult guardianship and alternatives for almost 19 years.

The Guardianship Association of North Dakota is a non-profit organization whose purpose is: To provide educational / training programs to support surrogate decision makers; educate the public and professionals on issues that involve guardianship; provide networking opportunities for individuals, families and agencies that deal or work in the areas of guardianship.

Guardian and Protective Services is a private, non-profit corporation that provides guardianship, conservatorship and alternatives. Our agency primarily serves our State's vulnerable elderly individuals. Currently we serve 200 individuals and of those 200, approximately 50 of them are guardianships. In addition, out of the 200 that we serve, approximately 75% of these individuals are low-income and have little to no ability to pay for services.

I'm asking that your committee amend House Bill 1199 with the recommended amendments (2 pages) that are attached to my testimony, and support it.

We are grateful for the development of House Bill 1199, but in its current form, it does not meet the need of our State and the many challenges or costs that are involved in guardianship. That is why we are requesting that the Bill be amended with the recommendations attached.

The funding change requests are modest when you consider that this is to cover individuals that are Elderly, Severely Mentally Ill and Traumatic Brain Injured and are not eligible for Developmental Disability Services. We know that this will not cover all the needs, but it is a start in trying to help meet the needs of our vulnerable adults.

Our agency continues to receive requests for guardianship services from all parts of the State and the requests over the years continue to grow in numbers and in complexity. On average we receive anywhere from 10 to 20 referrals / requests every quarter. We are just one of the entities that provide guardianship services in our State. I know that other entities, such as Catholic Charities of North Dakota, DKK Guardianship and those counties within our State that have Public Administrators all receive numerous requests.

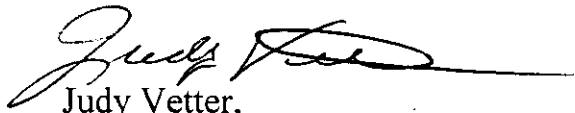
As providers and professionals in guardianship, the one common theme and crucial element that we all have to deal with on a daily basis is that our State does not provide funding to pay for guardianship provider services for the populations identified (Vulnerable Elderly, Severely Mentally Ill and Traumatic Brain Injured).

The referrals and requests that are received come with many complex issues that range from financial exploitation, abuse, neglect, fighting families, or no family willing or able to serve. We try to arrange and coordinate community services in the homes of individuals that live in rural, remote areas of our State. We try to keep people in their homes or have to decide that they need to be in a different setting such as basic care, assisted living or nursing homes. We work with individuals that live in substandard living conditions, while trying to meet their care needs. There are environmental hazards that we, as providers are exposed to due to the horrific living conditions of some of these referrals. Many of these home conditions jeopardize our own well being. We work on trying to recover assets to meet State Medicaid requirements when disqualifying transfers have occurred. We make difficult healthcare decisions for individuals that are not able to speak for themselves. These are just a few of the complex issues that guardians have to deal with.

I'm also enclosing for your review a case example to help you understand the seriousness and complexity of what a guardian deals with. Keep in mind that this is just one example. The identity of the individual has been changed to protect and keep the identity confidential. In the years that I have been working in the field of guardianship, this is not an isolated case. I, along with many of the other providers of guardianship have numerous and similar cases that we have encountered throughout our professional careers.

Thank you for your time.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Judy Vetter", with a long horizontal flourish extending to the right.

Judy Vetter,  
Guardianship Association of North Dakota  
And  
Guardian and Protective Services, Inc.

**Guardianship Services:**

<u>Cost Center</u>	<u>Year 1 Cost</u>	<u>Year 2 Cost</u>	<u>2011-2013 Total</u>	<u>General Funds</u>
Guardianship Establishment Legal Fees	\$ 55,000 *	\$ 55,000	\$ 110,000	\$ 110,000
Guardianship Service	\$ 63,875 **	\$ 131,035 ***	\$ 194,910	\$ 194,910
Guardianship Handbook	\$ <u>1,275</u>	<u>0</u>	\$ <u>1,275</u>	\$ <u>1,275</u>
<b>TOTALS:</b>	<b>\$ 120,150</b>	<b>\$ 186,035</b>	<b>\$ 306,185</b>	<b>\$ 306,185</b>
Amount included in 2011-2013 DHS Base Budget			\$ <u>40,000</u>	\$ <u>40,000</u>
Additional Amount needed to fund Guardianship Services for 2011-2013 Biennium			\$ 266,185	\$ 266,185

\*Legal fees of \$2200.00 for 25 persons each year = \$ 55,000

\*\* \$7.00/day for 25 persons for 365 days = \$ 63,875

\*\*\* \$7.18/day for 50 persons for 365 days = \$ 131,035

**House Bill 1199 Ammendments:**

Line 7, change the word "may" to "shall"

Line 9, return the word "may" to "must"

Line 12, return the word "may" to "shall"

Line 15, replace the amount of \$ 65,275 with \$ 266,185

Line 17, change the words "program enhancements" to "services"

Introduced by

Representatives Keiser, Glassheim

Senators Wardner, O'Connell

1 A BILL for an Act to amend and reenact section 50-06-24 of the North Dakota Century Code,  
2 relating to guardianship services; and to provide an appropriation.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 50-06-24 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **50-06-24. Guardianship services.**

7 The department of human services may create and coordinate a unified system for the  
8 provision of guardianship services to vulnerable adults who are ineligible for developmental  
9 disabilities case management services. The system ~~must~~ may include a base unit funding level  
10 at the same level as developmental disability corporate guardianship rates, provider standards,  
11 staff competency requirements, and guidelines and training for guardians. The department  
12 ~~shall~~ may adopt rules for guardianship services to vulnerable adults which are consistent with  
13 chapters 30.1-26, 30.1-28, and 30.1-29.

14 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general  
15 fund in the state treasury, not otherwise appropriated, the sum of \$65,275, or so much of the  
16 sum as may be necessary, to the Department of Human Services for the purpose of funding  
17 guardianship program enhancements, for the biennium beginning July 1, 2011, and ending  
18 June 30, 2013.



## This is the case of Gladys:

This is an actual case and the health issues, hygiene conditions and home conditions have not been distorted or embellished in any manner.

Gladys is 89-years-old and lives in a rural remote area of North Dakota. She is not married and has no children. She does have extended family that lives in North Dakota and were aware of the extreme health issues and home conditions that Gladys was dealing with and living in.

Gladys lives on a very limited amount of Social Security income that was not enough to meet even some of the basic needs of a human being.

Gladys' home has numerous problems that prevented her from having her basic needs met in order for her to thrive and live in a manner that is humane.

These are some of the conditions of her home:

- The water well on her property had not been working properly for some time and she did not have the resources to fix it. She did not have adequate access to water.
- There is no tub, shower, washing machine, or dryer in her home that was working.
- The kitchen stove was not working and there was no microwave in her home.
- The refrigerator was unplugged and contained rotten food.
- The toilet was not usable and was filled with feces and urine.
- Mice and cat droppings throughout the home. (mice and cats living in the home)
- Urine soaked carpets in the home.
- Floors with bare wood and holes in the flooring.
- Furniture covered with filth / dirt.
- Spoiled food and open containers of food setting around the home.

- Home is infested with flies, fleas, and gnats – even though it is winter.
- Piles of urine soaked clothing / rags in the home.
- Strong odors in the home that burn your eyes.

Gladys' Health Issues:

- Severe dementia
- Edema in her legs
- Sores on her ankles
- Blisters on her feet
- Partial blindness
- Incontinent of bladder and bowel

Gladys' hygiene was in poor condition:

- Her clothing was filthy and caked with dirt, cat hair, urine soaked clothing, and urine soaked socks and shoes.
- Cat urine in her hair.

As the Guardian, we have multiple issues to address in this case:

- Gladys' health issues.
- Environmental hazards in the home.
- Getting the cats placed in a shelter.
- Dealing with her property and the conditions of her home.
- Getting her approved for Medicaid to cover the care she will need.
- Addressing the problem that her home will be considered an available asset and will have to be sold for her to be eligible for Medicaid. How do you sell a home in this condition?
- Apply to be Social Security Representative Payee.

How does a Guardian get all this accomplished when there are no funds available to pay for their services?

#2

## Testimony on HB 1199 – Relating to Guardianship Services

**Rodger W. Wetzel**

Chair and members of the committee:

My name is Rodger Wetzel. I have had the privilege of advocating for, and testifying in support of, quality services for N.D. seniors for the past 25 years. I have worked in the field of aging in N.D. for 40 years, including Eldercare Director at St. Alexius, and Assistant Director of the Aging Services Division of the NDDHS. I now am primarily retired, providing PRN services. During the past 25 years I have been appointed by district judges to serve as “court visitor” to complete psychosocial assessments for more than 300 older adults who may be in need of a guardian.

As you know, with legislative support, we have a good system of guardianships for adults with developmental disabilities in N.D. But we do not have a similar program for other adults who are cognitively disabled and in need of a guardian. This generally includes adults with dementias, such as Alzheimer’s; adults who have experienced strokes and head injuries; and adults who have a serious mental illness. The most needy are those with no family and no financial resources.

If there is no willing family member to step forward to volunteer to serve as guardian, we have no program to obtain, and pay for, guardians for these adults. Most of these adults have been good citizens, but often through no fault of their own, they now find themselves unable to manage their affairs. Without a guardian, they become high risks for daily living problems, medical and other emergencies, and institutionalization. They have no one to manage their financial, legal, housing, medical, and service needs. Often they neglect these needs, become vulnerable to financial exploitation, and use more expensive medical and institutional services. Some institutionalized individuals cannot be discharged back to the community if they have no legal guardian. The need for guardians is a significant gap in our continuum of services for adults who no longer are mentally competent. This service would support their ability to remain in the community.

I urge your support for HB 1199. I would be happy to answer any questions. Thank you!

-16-

**Testimony on HB 1199**  
**House Human Services Committee**  
**January 26, 2011**

Good Morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent assisted living facilities, basic care facilities and nursing facilities in North Dakota. Thank you for the opportunity to testify on HB 1199. I am here to ask for your support of HB 1199.

North Dakota's Chief Justice Gerald VandeWalle said it correctly, elderly vulnerable adults are being exploited in North Dakota and we need to stop it. This bill helps to address the problem. Although HB 1199 removes the provisions requiring what standards must be included in a guardianship program the standards are less important than the more important need of having some type of program. The program has never been developed or implemented because of a lack of funding. We need a coordinated and united system for the provision of guardianship services to vulnerable adults.

We are aware of several situations where vulnerable long-term care residents are being financially exploited. Their resources are depleted and they are left destitute without income/assets to pay for their care. Sometimes this is occurring by children and sometimes by interested strangers. With new found wealth in mineral rights, the problem in some areas of the state is becoming more acute.

On October 1, 2010, nursing facilities were carrying \$5.3 million in resident accounts more than 60 days past due. This was due from 613 residents.

On average, one out of every six residents in a nursing facility has a payment issue associated with their account. Some of this is attributed to assets and income of the older person be used by other interested parties and not going to cover the cost of care and services. In these cases, Medicaid is rightly denying coverage because records show assets exist and these assets are to be used for their care. In some of these situations, the money has been spent by other parties and resources do not exist to pay for their care.

Long term care facilities have a right to discharge a resident for non-payment of their bill. However, before a facility can discharge a resident, they must find another place for them to live and receive care. Generally another facility is not willing to take them if they know they are not going to get paid. We can't simply put them on the street, what are we to do?

In these desperate situations, if we feel the resident is vulnerable and is being exploited we will seek guardianship. We don't feel it is appropriate for a nursing facility to seek guardianship for a resident under their care. We need a statewide program that we can refer these cases too. The program could seek to protect the vulnerable adult, their assets and seek guardianship if necessary.

This issue continues to grow.

The appropriation within HB 1199 is at least a beginning to address a situation that needs immediate remedy.

Thank you for your consideration of HB 1199. I would be happy to address questions.

Shelly Peterson, President  
North Dakota Long Term Care Association  
1900 North 11<sup>th</sup> Street • Bismarck, ND 58501 • (701) 222-0660  
Cell (701) 220-1992 • [www.ndltca.org](http://www.ndltca.org) • E-mail: [shelly@ndltca.org](mailto:shelly@ndltca.org)

#4

Testimony on House Bill 1199  
Human Services Committee  
January 26, 2011

Presented by Lyle Halvorson  
Associate State Director, AARP North Dakota

Chairman Weisz and Members of the Committee:

I am Lyle Halvorson, Associate State Director, AARP North Dakota. AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families.

With people living longer and increased age often accompanied by diminished decision making ability, all people should engage in advance planning in the event one becomes incapable of managing his or her personal decisions or property. There are several alternatives for authorizing another person or corporate entity to act on one's behalf. One option is guardianship, in which a court oversees the transfer of authority for property or personal decision making, or both, when an individual is deemed incapable of managing his or her own affairs.

AARP believes states should establish and adequately fund public guardianship programs to provide free or nominal-cost services for adults with limited resources who lack qualified relatives or others to serve as a guardian. We believe HB 1199 provides for responsible funding for the purpose of enhancing the state's current guardianship program.

AARP recommends a do pass on HB 1199.

Thank you for the opportunity to present our views to ensure access to guardianship services for North Dakotans in need of such services.

#5

House Human Services  
HB 1199  
January 26, 2011  
Teresa Larsen, Protection & Advocacy Project

The Protection and Advocacy Project (P&A) sees an obvious need for more funding for guardianship services for individuals with disabilities. While certainly not all individuals with disabilities need a guardian, when it is necessary, it is vital. In many situations, there is not a family member who is available or appropriate to fulfill the role of guardian.

North Dakota already has a comprehensive system in place for individuals with developmental disabilities. Catholic Charities has a contract with the Department of Human Services (DHS). Funding is available to petition for a guardianship when an individual has been referred to Catholic Charities by the individual's DD Program Manager. Once appointed as guardian, Catholic Charities is also paid for providing corporate guardianship services to the individual.

There is no similar system in place for individuals with other types of disabilities such as mental illness or traumatic brain injury. DHS has a total of \$40,000 for the biennium to petition for guardianships. No monies are available to pay for corporate guardianship services.

P&A supports HB 1199. While the dollar amount is most likely not adequate to meet the need, it is an incremental start.

Thank you. I will be happy to answer questions.

# 1

**Senate Human Services Committee**  
Testimony on House Bill 1199  
Senator Judy Lee – Chairman  
March 21, 2011

Chairman Lee and members of the Senate Human Services Committee, my name is Larry Bernhardt, the Executive Director of Catholic Charities North Dakota (CCND) and I am here today to ask you to make amendments to HB 1199 and then move it forward for passage.

The vulnerable adults of North Dakota need your help. Today, in North Dakota, we have a corporate guardianship service program for persons with developmental disabilities and I believe that program is working very well. However, we do not have a guardianship service program for vulnerable adults who are being physically abused or neglected or exploited or being taken advantage of financially or who are just unable to make decisions for their own care or well being. It is time for North Dakota to recognize its responsibility and make arrangements for those services to be available.

HB 1199 offers that opportunity. Although HB 1199 has been through several changes since it was originally filed, and currently all that is left is an unfunded study, I am offering changes to the bill which would reinstate it to its original form as filed with a few minor changes and an increase in the appropriation. I have attached a sampling of what the bill could look like, if amended by your Committee. I have also attached a sheet which shows why the funds are needed and how they could be expended.

There are suggestions that maybe we should just do a study so that we have a better sense of what the service could/should look like. I would offer that we have had ample studies – allow me to quote from a few:

1988 – A study completed at the request of the Department of Human Services, Aging Services Division, conducted by Kathy Kulesa, Paralegal with Legal Assistance of North Dakota. Findings included:

- The most common reason for an elderly person not to have a guardian is that there is no one to act as a guardian.



- There are no funds to pay for a guardianship proceeding
- Many counties do not have Public Administrators, so there is no one available to serve as guardian.
- 157 agencies were asked if there is a need for corporate guardianship in ND and 98 reported they saw a definite need, 39 reported they did not see a need, and 20 agencies were undecided on the issue.

1996 – A comprehensive Study of Guardianship Services in North Dakota, prepared for the ND Guardianship Coalition, conducted by Kari Conrad & Associates in Minot North Dakota. Conclusions were:

- Unserved persons in need of some type of guardianship are probably persons with Alzheimers or Dementia, chronic mental illness, and the late stages of alcoholism.
- If guardianship services are extended to unserved persons and expanded to include technical assistance and training, the benefits to both the individual and society will be great.
- The difficulty encountered when attempting to gather very basic information about guardians raises serious questions about how the courts manage guardianships in North Dakota. It is difficult to believe that the annual reports submitted by guardians are routinely monitored by the court, if even a list of guardians cannot be made available.

2004 – A Guardianship Survey was conducted by GAND (Guardianship Association of North Dakota) to determine the need, standards and practices, and funding issues regarding guardianship in ND. Their recommendations were:

- 57% of the respondents indicated that guardianship needs for the populations served are NOT adequate and 50% of the respondents indicated there is a difficulty finding individuals willing to serve as guardians.

- It is estimated there may be as many as 120-220 individuals in ND currently not receiving guardianship services due to lack of resources.
- Increased need for guardianship services are most identifiable in the elderly population, followed by individuals with mental illness, physical disabilities and head/brain injuries. Most are caused by elderly living longer, individuals with mental illness and chemical dependency are in the communities rather than institutionalized..
- 83% of the respondents indicated there should be minimum standards for guardians. And 13% said the performance of guardians they currently observed was inadequate.

In North Dakota we have excellent Guardianship statutes, we have good program practices identified in the guardianship program for D.D. which could easily be expanded to cover all vulnerable adults. We believe that North Dakota could start a Guardianship Program in the coming biennium and we could start addressing those needs in North Dakota now.

There are many stories of people in North Dakota who are or were in need of guardianship services and because a guardian could not be found, the person went unhelped. I hope that in a small way I can be speaking for those people today

With your help, the future for the vulnerable adults in North Dakota may look a little bit brighter.

Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

**Guardianship Services:**

<u>Cost Center</u>	<u>Year 1 Cost</u>	<u>Year 2 Cost</u>	<u>2011-2013 Total</u>	<u>General Funds</u>
Guardianship Establishment Legal Fees	\$ 55,000 *	\$ 55,000	\$ 110,000	\$ 110,000
Guardianship Service	\$ 63,875 **	\$ 131,035 ***	\$ 194,910	\$ 194,910
Guardianship Handbook	<u>\$ 1,275</u>	<u>0</u>	<u>\$ 1,275</u>	<u>\$ 1,275</u>
<b>TOTALS:</b>	<b>\$ 120,150</b>	<b>\$ 186,035</b>	<b>\$ 306,185</b>	<b>\$ 306,185</b>
Amount included in 2011-2013 DHS Base Budget			<u>\$ 40,000</u>	<u>\$ 40,000</u>
Additional Amount needed to fund Guardianship Services for 2011-2013 Biennium			\$ 266,185	\$ 266,185

\*Legal fees of \$2200.00 for 25 persons each year = \$ 55,000

\*\* \$7.00/day for 25 persons for 365 days = \$ 63,875

\*\*\* \$7.18/day for 50 persons for 365 days = \$ 131,035

11.0021.03000

SECOND ENGROSSMENT

Sixty-second  
Legislative Assembly  
of North Dakota

REENGROSSED HOUSE BILL NO. 1199

Introduced by

Representatives Keiser, Glassheim

Senators Wardner, O'Connell

A BILL for an Act to ~~provide for a study of guardianship services for vulnerable adults in the State~~ amend and reenact section 50-06-24 of the North Dakota Century Code, relating to guardianship services; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Amendment.** Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-24. GUARDIANSHIP SERVICES. STUDY.** ~~During the 2011-12 interim, the legislative management shall contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The consultant shall provide periodic reports to the legislative management. The consultant shall present the final report and recommendations regarding the study to the legislative management before June 1, 2012. The legislative management shall report the findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly. The~~ department of human services shall create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case

management services. The system must include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians. The department shall adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$266,185, or so much of the sum as may be necessary, to the Department of Human Services for the purpose of funding guardianship program services, for the biennium beginning July 1, 2011, and ending June 30, 2013.



#2

AARP North Dakota T: 1-866-554-5383  
107 W. Main Avenue F: 701-255-2242  
Suite 125 CITY: 1-877-434-7598  
Bismarck, ND 58501 www.aarp.org/nd

Testimony on House Bill 1199  
Senate Human Services Committee  
March 21, 2011

Presented by Marlowe Kro  
Associate State Director, AARP North Dakota

Chairwoman Lee and Members of the Committee:

I am Marlowe Kro, Associate State Director, AARP North Dakota. AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families. AARP North Dakota has 83,000 members.

With people living longer and increased age often accompanied by diminished decision making ability, all people should engage in advance planning in the event one becomes incapable of managing his or her personal decisions or property. There are several alternatives for authorizing another person or corporate entity to act on one's behalf. One option is guardianship, in which a court oversees the transfer of authority for property or personal decision making, or both, when an individual is deemed incapable of managing his or her own affairs.

AARP believes states should establish and adequately fund public guardianship programs to provide free or nominal-cost services for adults with limited resources who lack qualified relatives or others to serve as a guardian. We believe HB 1199 should be amended to include adequate funding for the purpose of enhancing the state's current guardianship program.

Thank you for the opportunity to present our views to ensure access to guardianship services for North Dakotans in need of such services.

Marlowe Kro  
[mkro@aarp.org](mailto:mkro@aarp.org)  
701-355-3643 (desk)  
701-220-3833 (cell)

#3

**Senate Human Services Committee  
Testimony of Judy Vetter on House Bill 1199  
Senator Judy Lee – Chairman  
March 21, 2011**

Chairman Lee and Committee Members of the Senate Human Services Committee, my name is Judy Vetter, I am the President of Guardianship Association of North Dakota, and the Administrator of Guardian and Protective Services, Inc. I'm here today to speak with you about the needs within our State for guardianship services for our vulnerable adult populations that are not Developmentally Disabled.

I have been working in the field of providing guardianship and other protective arrangements for 18 years. During these years, I have seen the need for guardianship services continue to grow each year. There have been numerous studies conducted about the need for guardianship services in our State and those studies have all substantiated the need for these services.

Our State is at a critical point in addressing the needs of vulnerable adults who need the services of a guardian. There continues to be numerous requests from a wide range of service providers throughout North Dakota. The common theme in all the requests is for someone or some agency to be guardian for an individual that is at risk. The lack of resources available to initiate and/or pay for the costs of the guardianship process, and no funding to pay for the ongoing costs of guardianship administration compound the difficult problems encountered when seeking guardianship services.

In 2005, Senate Bill 2028 was passed into legislation and signed by the Governor. This bill originally had an appropriation of \$772,550 for a comprehensive guardianship service system. Senate Bill 2028 included the important components of: paying for the direct services of guardianship and the petitioning costs related to the establishment of a guardianship. Unfortunately this Bill was only funded at the level of \$40,000.00 per biennium.

The appropriation of \$40,000 in Senate Bill 2028 is currently being administered by the Department of Human Services, Aging Services Division. It is being used towards the petitioning / legal costs for establishing guardianships. Even though we saw the passage of Senate Bill 2028 as a step in the right direction, it still leaves a huge gap in the delivery of guardianship services for our vulnerable Elderly, Seriously Mentally Ill, and Traumatic Brain Injured individuals in our State.

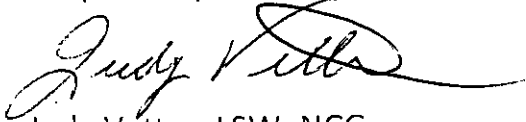
Currently, our State only funds guardianship services for the Developmentally Disabled population. A similar program is critically needed for all vulnerable adult populations (Traumatic Brain Injury, Seriously Mentally Ill, and Elderly). There is no funded State guardianship program for these individuals. Many of these individuals have numerous complex issues that range from financial exploitation, abuse, neglect, family dysfunction, or no family willing or able to serve.

I'm requesting that your committee amend HB1199 back to its original form as filed, with the minor changes noted in the attachments of my testimony, and to appropriate adequate funding that will assist in implementing a comprehensive guardianship program for all vulnerable adults. I'm asking that you be the life line and voice for those who need to be protected and are unable to pay for guardianship services in our State.

If your committee is not able to support this legislative request, then I stand before you today and ask that you, at the very least pass legislation that supports the need for a comprehensive study, with adequate funding for the study.

Thank you for your time. I hope to be able to answer any questions you may have about guardianship services.

Respectfully Submitted,



Judy Vetter, LSW, NCG

President of the Guardianship Association of North Dakota

And

Administrator of Guardian and Protective Services, Inc.



Introduced by

Representatives Keiser, Glassheim

Senators Wardner, O'Connell

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8 provision of guardianship services to vulnerable adults who are ineligible for developmental  
9 disabilities case management services. The system ~~must~~ may include a base unit funding level  
10 at the same level as developmental disability corporate guardianship rates, provider standards,  
11 staff competency requirements, and guidelines and training for guardians. The department  
12 ~~shall~~ may adopt rules for guardianship services to vulnerable adults which are consistent with  
13 chapters 30.1-26, 30.1-28, and 30.1-29.

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15 fund in the state treasury, not otherwise appropriated, the sum of \$65,275, or so much of the  
16 sum as may be necessary, to the Department of Human Services for the purpose of funding  
17 guardianship program enhancements, for the biennium beginning July 1, 2011, and ending  
18 June 30, 2013.

**House Bill 1199 Ammendments:**

Line 7, change the word "may" to "shall"

Line 9, return the word "may" to "must"

Line 12, return the word "may" to "shall"

Line 15, replace the amount of \$ 65,275 with \$ 266,185

Line 17, change the words "program enhancements" to "services"

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## This is the case of Gladys:

This is an actual case and the health issues, hygiene conditions and home conditions have not been distorted or embellished in any manner.

Gladys is 89-years-old and lives in a rural remote area of North Dakota. She is not married and has no children. She does have extended family that lives in North Dakota and were aware of the extreme health issues and home conditions that Gladys was dealing with and living in.

Gladys lives on a very limited amount of Social Security income that was not enough to meet even some of the basic needs of a human being.

Gladys' home has numerous problems that prevented her from having her basic needs met in order for her to thrive and live in a manner that is humane.

These are some of the conditions of her home:

- The water well on her property had not been working properly for some time and she did not have the resources to fix it. She did not have adequate access to water.
- There is no tub, shower, washing machine, or dryer in her home that was working.
- The kitchen stove was not working and there was no microwave in her home.
- The refrigerator was unplugged and contained rotten food.
- The toilet was not usable and was filled with feces and urine.
- Mice and cat droppings throughout the home. (mice and cats living in the home)
- Urine soaked carpets in the home.
- Floors with bare wood and holes in the flooring.
- Furniture covered with filth / dirt.
- Spoiled food and open containers of food setting around the home.

- Home is infested with flies, fleas, and gnats – even though it is winter.
- Piles of urine soaked clothing / rags in the home.
- Strong odors in the home that burn your eyes.

#### Gladys' Health Issues:

- Severe dementia
- Edema in her legs
- Sores on her ankles
- Blisters on her feet
- Partial blindness
- Incontinent of bladder and bowel

#### Gladys' hygiene was in poor condition:

- Her clothing was filthy and caked with dirt, cat hair, urine soaked clothing, and urine soaked socks and shoes.
- Cat urine in her hair.

#### As the Guardian, we have multiple issues to address in this case:

- Gladys' health issues.
- Environmental hazards in the home.
- Getting the cats placed in a shelter.
- Dealing with her property and the conditions of her home.
- Getting her approved for Medicaid to cover the care she will need.
- Addressing the problem that her home will be considered an available asset and will have to be sold for her to be eligible for Medicaid. How do you sell a home in this condition?
- Apply to be Social Security Representative Payee.

How does a Guardian get all this accomplished when there are no funds available to pay for their services?

## GUARDIANSHIP ASSOCIATION OF NORTH DAKOTA LEGISLATIVE HISTORY

The Guardianship Association of North Dakota (G.A.N.D.) was established in September 1997. G.A.N.D. 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. Encouraging the development of appropriate legislation designed to improve services to persons in need of assistance is one of the primary purposes of our organization.

From its inception, G.A.N.D. has focused its energies on developing legislation related to three issues: formation of standards of practice for guardians; expansion of guardianship services to people with mental illness, vulnerable elderly persons and individuals with traumatic brain injuries; and establishment of an ongoing funding source for services.

During the 1999 Legislative Session, G.A.N.D. testified on behalf of two bills and a concurrent resolution. House Bill 1301 proposed the creation of a guardianship service system that would be similar to the system that is in place for people with developmental disabilities. The bill also addressed the need for provider standards, staff competency, accreditation standards and the use of an emergency funding procedure to cover the costs of establishing needed guardianships. An appropriation of \$878,272 from the general fund was included in the bill. House Bill 1302 asked for an appropriation of \$50,000 for the provision of volunteer guardianship services. House Concurrent Resolution 3016 asked that the Legislative Council study the qualifications, standards and the monitoring requirements for guardianship services for incapacitated persons. Unfortunately, all three pieces of legislation failed to pass. However, G.A.N.D. did succeed in educating legislators about guardianship and the gaps in our current system.

G.A.N.D. was also very active in its support of two bills during the 2001 Legislative Session. Senate Bill 2329 asked for an appropriation of \$440,000 for the development of a guardianship service system for vulnerable adults who are not developmentally disabled and an appropriation of \$50,000 for the provision of volunteer guardianship services. House Bill 1388 again addressed the need for standards of practice for guardians in accordance with the National Guardianship Association's standards of practice. In spite of the many efforts of G.A.N.D.'s membership, the Legislature failed to pass these bills. However, G.A.N.D.'s lobbying and educational efforts were not wasted as legislators were becoming more knowledgeable about guardianship needs in North Dakota.

As G.A.N.D. began strategizing and preparing for the 2003 Legislature, it was decided that pursuing funding for any new guardianship services would be ineffective due to the state's poor fiscal outlook. Instead, G.A.N.D. was instrumental in the development of Senate Concurrent Resolution 4008. This resolution asked the Legislative Council to study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals

and individuals with traumatic brain injuries. Many members of G.A.N.D. testified in support of SCR 4008 and our efforts were rewarded by the successful passage of SCR 4008 in the 2003 Legislature. When the Legislative Council convened in May 2003, SCR 4008 was chosen as one of its studies. The Legislative Council assigned the guardianship study to the Interim Criminal Justice Committee. G.A.N.D. has taken the lead and organized the North Dakota Guardianship Task Force. It is hoped that the Interim Criminal Justice Committee will work together with the Task Force and G.A.N.D. to thoroughly study guardianship issues in the next 18 months. It is G.A.N.D.'s goal to have proposed legislation regarding needed guardianship services, funding and standards of practice ready for the 2005 Legislature.

## FINAL 2005 LEGISLATIVE UPDATE

When the 2005 legislative session began in January, it held so much promise to significantly improve guardianship services on behalf of individuals with severe mental illness, vulnerable elderly persons and people with traumatic brain injuries. From August 2003 to August 2004, GAND and the ND Guardianship Task Force worked very closely with the Interim Criminal Justice Committee as it studied the availability of guardianship services in North Dakota and the need for standards of practice for guardians. In August 2004, the Task Force submitted proposed legislation to the Interim Criminal Justice Committee. We were thrilled when the committee made a unanimous "Do Pass" recommendation! Senate Bill 2028 was the end result of 18 months of non-stop work by the Task Force. SB 2028 included an appropriation of \$772,550 for the creation of a guardianship service system for vulnerable people, the development of a volunteer training program for guardians and the development of standards of practice for guardians. SB 2028 funded to very important components: direct, day-to-day guardianship services; and petitioning costs related to the establishment of a guardianship. At the 2005 Legislature, the first hearing for this comprehensive guardianship bill was in front of the Senate Judiciary Committee. The committee made a "Do Pass" recommendation after which SB 2028 was sent to the Senate Appropriations Committee for review. Unfortunately, the Senate Appropriations Committee felt that the appropriation of \$772,550 was too high and it reduced the appropriation to \$40,000. SB 2028 was then transferred to the House. Task Force members spent hours testifying, sending e-mails and talking to legislators in an attempt to increase funding. The House eventually passed SB 2028 but the appropriation remained at \$40,000. The Governor has signed SB 2028 and we are currently waiting to see how the Department of Human Services will respond to the bill. Even though the funding has been greatly reduced, there is good news: our bill was not vetoed; and guardianship is now a line item in the ND Department of Human Services budget. I am already looking forward to the 2007 legislative session so we can continue our mission of improving guardianship services in our state. I receive too many heartbreaking phone calls from hospitals, nursing homes and family members as they search for guardianship services for their vulnerable patient, resident or loved one. Because of the tremendous work of GAND and the Task Force at the 2005 Legislature, we now have our foot in the door and we will continue to build from there!

I would like to take a moment to thank the members of the Task Force. The Task Force met at least once or twice a month for 18 months and, through their hard work and dedication, SB 2028 became a reality. I would like to thank Rodger Wetzel, St. Alexius Medical Center, for co-chairing the Task Force and for his frequent testimony throughout the legislative process. I am also very grateful to all of the Task Force members who volunteered countless hours to improve guardianship services in North Dakota. In addition to serving on the Task Force, members often testified at committee hearings and/or contacted legislators in person or by e-mail to support our guardianship bill. These very special people include: Mel Webster (Attorney at Law), Ted Gladden (State Court Administrator), Bruce Murry (Protection & Advocacy Attorney), Bill Chaussee (Guardian and Protective Services), Shelly Peterson (ND Long-Term Care Association),



Sandi Tabor (Attorney General's Office), Paul Griffin (Partners, Inc.), Marlowe Kro (AARP), Honorable Burt L. Riskedahl (District Court Judge), Helen Funk (Aging Services Division at DHS), Mary Simonson (Open Door Center, Carol Watrel (volunteer guardian), M.C. Brown (Medcenter One), Cindy Lien (ND State Hospital) and Cindy Sheldon (NDAD). Again, I would like to thank all of you for your gifts of time and talent to the Task Force.

And finally, on behalf of GAND and the Task Force, I would like to express our sincere appreciation to Tom Tupa and his staff from APT, Inc. Tom and his staff facilitated the efforts of the Task Force from its inception in July 2003 until the completion of the 2005 Legislature. Tom's expertise and leadership made a huge difference in our success with the legislature. In the past, GAND has approached the ND Legislature with a number of guardianship bills but we were always unsuccessful. With Tom's direction, we succeeded in having a bill successfully pass through the Legislature. Again, we are very thankful to Tom for his help and guidance through the exciting (and exhausting) legislative process!!

Donna Byzewski, GAND President

Testimony of Judy Vetter,  
President of the Guardianship Association of North Dakota  
And  
Administrator of Guardian and Protective Services, Inc.  
January 26, 2011

Regarding House Bill Number 1199 on Guardianship Services.

Chairman Weisz and Committee Members of the House and Human Services Committee:

My name is Judy Vetter, I am the President of the Guardianship Association of North Dakota and the Administrator of Guardian and Protective Services, Inc. I want to thank you for the opportunity to be here today to testify on behalf of House Bill 1199.

I have been working in the field of adult guardianship and alternatives for almost 19 years.

The Guardianship Association of North Dakota is a non-profit organization whose purpose is: To provide educational / training programs to support surrogate decision makers; educate the public and professionals on issues that involve guardianship; provide networking opportunities for individuals, families and agencies that deal or work in the areas of guardianship.

Guardian and Protective Services is a private, non-profit corporation that provides guardianship, conservatorship and alternatives. Our agency primarily serves our State's vulnerable elderly individuals. Currently we serve 200 individuals and of those 200, approximately 50 of them are guardianships. In addition, out of the 200 that we serve, approximately 75% of these individuals are low-income and have little to no ability to pay for services.

I'm asking that your committee amend House Bill 1199 with the recommended amendments (2 pages) that are attached to my testimony, and support it.

We are grateful for the development of House Bill 1199, but in its current form, it does not meet the need of our State and the many challenges or costs that are involved in guardianship. That is why we are requesting that the Bill be amended with the recommendations attached.

The funding change requests are modest when you consider that this is to cover individuals that are Elderly, Severely Mentally Ill and Traumatic Brain Injured and are not eligible for Developmental Disability Services. We know that this will not cover all the needs, but it is a start in trying to help meet the needs of our vulnerable adults.

Our agency continues to receive requests for guardianship services from all parts of the State and the requests over the years continue to grow in numbers and in complexity. On average we receive anywhere from 10 to 20 referrals / requests every quarter. We are just one of the entities that provide guardianship services in our State. I know that other entities, such as Catholic Charities of North Dakota, DKK Guardianship and those counties within our State that have Public Administrators all receive numerous requests.

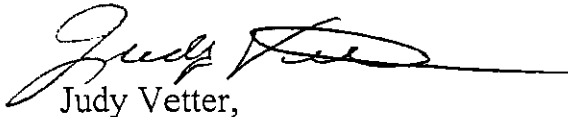
As providers and professionals in guardianship, the one common theme and crucial element that we all have to deal with on a daily basis is that our State does not provide funding to pay for guardianship provider services for the populations identified (Vulnerable Elderly, Severely Mentally Ill and Traumatic Brain Injured).

The referrals and requests that are received come with many complex issues that range from financial exploitation, abuse, neglect, fighting families, or no family willing or able to serve. We try to arrange and coordinate community services in the homes of individuals that live in rural, remote areas of our State. We try to keep people in their homes or have to decide that they need to be in a different setting such as basic care, assisted living or nursing homes. We work with individuals that live in substandard living conditions, while trying to meet their care needs. There are environmental hazards that we, as providers are exposed to due to the horrific living conditions of some of these referrals. Many of these home conditions jeopardize our own well being. We work on trying to recover assets to meet State Medicaid requirements when disqualifying transfers have occurred. We make difficult healthcare decisions for individuals that are not able to speak for themselves. These are just a few of the complex issues that guardians have to deal with.

I'm also enclosing for your review a case example to help you understand the seriousness and complexity of what a guardian deals with. Keep in mind that this is just one example. The identity of the individual has been changed to protect and keep the identity confidential. In the years that I have been working in the field of guardianship, this is not an isolated case. I, along with many of the other providers of guardianship have numerous and similar cases that we have encountered throughout our professional careers.

Thank you for your time.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Judy Vetter", with a long horizontal flourish extending to the right.

Judy Vetter,  
Guardianship Association of North Dakota  
And  
Guardian and Protective Services, Inc.

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2 relating to guardianship services; and to provide an appropriation.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. AMENDMENT. Section 50-06-24 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 50-06-24. Guardianship services.

7 The department of human services may create and coordinate a unified system for the  
8 provision of guardianship services to vulnerable adults who are ineligible for developmental  
9 disabilities case management services. The system ~~must~~ may include a base unit funding level  
10 at the same level as developmental disability corporate guardianship rates, provider standards,  
11 staff competency requirements, and guidelines and training for guardians. The department  
12 ~~shall~~ may adopt rules for guardianship services to vulnerable adults which are consistent with  
13 chapters 30.1-26, 30.1-28, and 30.1-29.

14 SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general  
15 fund in the state treasury, not otherwise appropriated, the sum of \$65,275, or so much of the  
16 sum as may be necessary, to the Department of Human Services for the purpose of funding  
17 guardianship program enhancements, for the biennium beginning July 1, 2011, and ending  
18 June 30, 2013.

## This is the case of Gladys:

This is an actual case and the health issues, hygiene conditions and home conditions have not been distorted or embellished in any manner.

Gladys is 89-years-old and lives in a rural remote area of North Dakota. She is not married and has no children. She does have extended family that lives in North Dakota and were aware of the extreme health issues and home conditions that Gladys was dealing with and living in.

Gladys lives on a very limited amount of Social Security income that was not enough to meet even some of the basic needs of a human being.

Gladys' home has numerous problems that prevented her from having her basic needs met in order for her to thrive and live in a manner that is humane.

These are some of the conditions of her home:

- The water well on her property had not been working properly for some time and she did not have the resources to fix it. She did not have adequate access to water.
- There is no tub, shower, washing machine, or dryer in her home that was working.
- The kitchen stove was not working and there was no microwave in her home.
- The refrigerator was unplugged and contained rotten food.
- The toilet was not usable and was filled with feces and urine.
- Mice and cat droppings throughout the home. (mice and cats living in the home)
- Urine soaked carpets in the home.
- Floors with bare wood and holes in the flooring.
- Furniture covered with filth / dirt.
- Spoiled food and open containers of food setting around the home.



- Home is infested with flies, fleas, and gnats – even though it is winter.
- Piles of urine soaked clothing / rags in the home.
- Strong odors in the home that burn your eyes.

Gladys' Health Issues:

- Severe dementia
- Edema in her legs
- Sores on her ankles
- Blisters on her feet
- Partial blindness
- Incontinent of bladder and bowel

Gladys' hygiene was in poor condition:

- Her clothing was filthy and caked with dirt, cat hair, urine soaked clothing, and urine soaked socks and shoes.
- Cat urine in her hair.

As the Guardian, we have multiple issues to address in this case:

- Gladys' health issues.
- Environmental hazards in the home.
- Getting the cats placed in a shelter.
- Dealing with her property and the conditions of her home.
- Getting her approved for Medicaid to cover the care she will need.
- Addressing the problem that her home will be considered an available asset and will have to be sold for her to be eligible for Medicaid. How do you sell a home in this condition?
- Apply to be Social Security Representative Payee.

How does a Guardian get all this accomplished when there are no funds available to pay for their services?

**Testimony on HB 1199 – Relating to Guardianship Services**

**Rodger W. Wetzel**

Chair and members of the committee:

My name is Rodger Wetzel. I have had the privilege of advocating for, and testifying in support of, quality services for N.D. seniors for the past 25 years. I have worked in the field of aging in N.D. for 40 years, including Eldercare Director at St. Alexius, and Assistant Director of the Aging Services Division of the NDDHS. I now am primarily retired, providing PRN services. During the past 25 years I have been appointed by district judges to serve as “court visitor” to complete psychosocial assessments for more than 300 older adults who may be in need of a guardian.

As you know, with legislative support, we have a good system of guardianships for adults with developmental disabilities in N.D. But we do not have a similar program for other adults who are cognitively disabled and in need of a guardian. This generally includes adults with dementias, such as Alzheimer’s; adults who have experienced strokes and head injuries; and adults who have a serious mental illness. The most needy are those with no family and no financial resources.

If there is no willing family member to step forward to volunteer to serve as guardian, we have no program to obtain, and pay for, guardians for these adults. Most of these adults have been good citizens, but often through no fault of their own, they now find themselves unable to manage their affairs. Without a guardian, they become high risks for daily living problems, medical and other emergencies, and institutionalization. They have no one to manage their financial, legal, housing, medical, and service needs. Often they neglect these needs, become vulnerable to financial exploitation, and use more expensive medical and institutional services. Some institutionalized individuals cannot be discharged back to the community if they have no legal guardian. The need for guardians is a significant gap in our continuum of services for adults who no longer are mentally competent. This service would support their ability to remain in the community.

I urge your support for HB 1199. I would be happy to answer any questions. Thank you!

#5

## House Bill 1199

### Senate Human Services Committee

March 21, 2011

Testimony of Jim Jacobson  
ND Protection and Advocacy Project

Chair Lee and members of the Senate Human Services Committee, I am Jim Jacobson, Director of Program Services for the ND Protection and Advocacy Project (P&A). P&A is Federal and State funded disability rights protection agency. I am here today to testify in support of House Bill 1199.

P&A supports a study of the guardianship needs that would result from the passage of House Bill 1199. P&A provides protective services to vulnerable adults. In the course of providing these services we have become very aware of the need for guardians to effectively address identified vulnerabilities caused by various disabling conditions.

P&A's experience would also support the value of a relationship between the Department of Human Services and a designated agency to provide those guardianship services. This relationship currently exists in the contract that the Department of Human Services has with Catholic Charities of North Dakota. Through this relationship effective, highly qualified and well monitored guardianship services have been provided for over two decades. The problem is that only one "diagnosed" area of disability is eligible, developmental disabilities. This leaves the need for guardianship for many vulnerable people unaddressed.

In order to respond to that need funding must to be provided for all steps towards establishing an appropriate guardianship. Costs incurred in this process include but may not be limited to; petitioning, identifying and contracting for a court visitor, a

guardian-ad-litem, and a physician or clinical psychologist. Resources must also be developed to ensure that when support of a guardian is needed by an individual there is an ability to identify a person or organization to meet that need. Currently active cases support the fact that this need exists and must be addressed today.

Therefore, P&A does support House Bill 1199 but would recommend an amendment that would provide for a minimal appropriation to respond to current needs. This would provide some much needed fiscal support while the study identifies more systemic and long term solutions.

Thank you Chairperson Lee and members of the Senate Human Services Committee for the opportunity to testify in support of House Bill 1199. I would be happy to answer any questions.

Proposed Amendment to Reengrossed House Bill No. 1199

Page 1, line 2, after "state" insert "and to provide an appropriation"

Page 1, after line 14, insert

**"Section 2. Appropriations.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, to the Department of Human Services for funding a guardianship program for vulnerable adults who are ineligible for developmental disabilities case management services, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

**Lee, Judy E.**

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**From:** VandeWalle, Justice Gerald [GVandeWalle@ndcourts.gov]  
**Sent:** Monday, March 21, 2011 2:50 PM  
**To:** Lee, Judy E.  
**Subject:** RE: HCR 1199

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Senator: I have followed 1199 and Louie and Sally sat in on the hearing this morning. I understand there was testimony to the effect this matter had been studied enough, just give us the money. I am disturbed by that approach because, if it is intended to be the overall answer, I believe it is too a narrow view of the problem. Guardianship is surely a big portion of the picture but there are other issues as well, including but not limited to those for whom a guardian is never requested. I am not opposed to the money but I hope one of the pieces of legislation that allows for a broad study of elder issues, including but not limited, to another look at guardianship, carries the day. On the other hand I understand that something is better than nothing. This study does require the contract with a consultant. I do not know if that would happen under the other studies.

I assume that if more than one piece of legislation relating to studies is passed legislative management will decide the scope of the study. You understand that process much better than I do. After last session when the study resolution was adopted but not selected for study (one reason being there had been a previous study) I am more concerned whether there will be any study or if there is one that it will be too narrow. Perhaps we do have to take a bite at a time but once there is a study, even if limited, it seems to foreclose further consideration—at least for a period of time.

Perhaps the various pieces of legislation could be combined into one but I do not know if that is possible—or even desirable

Jerry

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**From:** Lee, Judy E. [mailto:jlee@nd.gov]  
**Sent:** Monday, March 21, 2011 2:28 PM  
**To:** VandeWalle, Justice Gerald  
**Subject:** HCR 1199

Please take a look at 1199; it is an old friend, one more request for a study, although we've had several, one of which was extremely thorough. It does kind of tie in with our earlier discussion about vulnerable adults. Do you see any merits to the study? We're going to discuss adding some money back in for a program.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
home phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

3-23-2011

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1199

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-06-24 of the North Dakota Century Code, relating to guardianship services; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-24. Guardianship services.** The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system ~~must~~ may include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians. The department ~~shall~~ may adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the Department of Human Services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

This amendment has been prepared at the request of Senator J. Lee.

**Amendments to 11.0021.03000**

**GUARDIANSHIP PROGRAM 2011-2013 BIENNIUM  
BUDGET REQUEST**

Year 1		Units	Cost/Unit	Total Cost		
Guardian Fees		16	\$500.00	\$8,000.00		
Year 1 Total					\$8,000	
<b>Year 2</b>						
Establishments		16	\$2,500.00	\$40,000.00		
Guardian Fees		32	\$500.00	\$16,000.00		
Year 2 Total					\$56,000	
<b>2011-2013 BIENNIUM TOTAL BUDGET REQUEST</b>						<b>\$64,000</b>

**BUDGET NARRATIVE**

**Guardianship Establishment Fund:** Continuation of the program to pay for the establishment of guardianships (petitioning costs) for individuals ineligible for DD guardianship services. The number of guardianships per biennium has been:

- 05-07 Biennium = 10 guardianships
- 07-09 Biennium = 29 guardianships
- 09-11 Biennium = 27 guardianships through March 2011.

Average petitioning costs ranged from \$1,141 to \$2,500. The total request for the 2011-2013 Biennium is \$80,000. This would provide petitioning costs for 32-70 guardianships.

The Department set the maximum cost per guardianship at \$2,500 when the guardianship establishment fund was started five years ago. This limit is based on conversations with various legal firms and the Department's Legal Advisory Unit as it was identified the larger communities have more expensive attorneys than the smaller communities.

Each request is very carefully screened to assure that the proposed ward meets the priorities of the guardianship committee set up 5 years ago. These priorities are: diagnosed mental illness, diagnosed TBI and individuals age 60 years and older. For the current biennium, demand for this service has increased.



**Guardian Fees (Pilot Program):** A pilot program to provide an annual payment of \$500 to guardians of those wards for which a guardianship was established using the Guardianship Establishment Fund. This payment is to offset the costs associated with providing guardianship services. The amount suggested is an arbitrary figure that would equal about \$1.37 per day. Subsidized guardianship is a well established program within the children's system. In North Dakota, the subsidized guardianship program administered through the Children and Families Services Division provides a monthly payment of \$490 to guardians. For adult guardianships, this type of program is not well established. Guardians can collect fees from their wards. However, in many cases the ward has little if any income and thus collecting a fee is unrealistic. Guardians must then foot the bill for providing services, which is a disincentive for accepting the responsibilities of being a guardian. It is hoped that the proposed annual payment would provide incentive for becoming a guardian by offsetting some of the costs associated with providing guardianship services.

Anticipated costs to implement the fee for guardians will be \$24,000 as outlined below:

- Year 1 of the 2011-2013 biennium: 16 guardians would receive payment of \$500 to assist in the offset of costs associated to being a guardian for a total of \$8,000.
- Year 2 of the 2011-2013 biennium, 32 guardians would receive the \$500 payment for a total of \$16,000.

Petitioning costs for Year 2 of the biennium for the Guardianship Establishment Fund would be \$40,000. Previous experience indicates that there have only been a few situations where the Department has been billed the maximum amount for petitioning costs. The Department has been able to extend the funds further by using volunteer Guardian Ad Litem and Court visitors making the service available to more individuals. It is expected this practice will not change, that these funds would assure at a minimum 32 individuals to benefit from the Guardianship Establishment Funds and 32 guardians to be awarded the \$500 guardian fee.

# 1

**Lee, Judy E.**

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**From:** Keller, Becky J.  
**Date:** Tuesday, April 12, 2011 5:07 PM  
**To:** Lee, Judy E.  
**Cc:** Knudson, Allen H.  
**Subject:** judicial cost estimate

Senator Lee,

This email is in response to your question regarding the cost of a consultant to assist the judicial branch in evaluating issues relating to vulnerable adults. In his State of The Judiciary address on January 5, 2011, Chief Justice VandeWalle identified several areas for potential elder abuse, neglect and exploitation including guardianship issues, unsupervised use of representative payees, Power of Attorney agreements, and scams aimed at the elderly. Based on information received from the judicial branch, they have not determined the estimated cost for a consultant to assist them in this evaluation. The Legislative Management has hired consultants in the past two bienniums to assist with studies. The type of study and related funding are listed below:

Employee compensation study (2009-11)	\$100,000
Correctional Facility Review (2007-09)	\$250,000

Please contact this office if you have questions or need additional information.

Becky Keller  
Senior Fiscal Analyst  
Legislative Council  
328-2916

- #2

Lee, Judy E.

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From: collette [mathernInc@drtel.net]  
Date: Wednesday, April 13, 2011 12:01 PM  
To: Mathern, Tim; Lee, Judy E.  
Subject: Guardianships

Good morning Tim and Judy,  
I understand from Shelly Peterson that you are meeting later today regarding the guardianship bill.

I would like to stress the necessity of funding for this bill. Working in Long Term Care for the past 10 years, I have seen many tragic cases of vulnerable adults being exploited. I currently have a situation right now where a lady has developed dementia and is no longer capable of making decisions regarding her finances, her will, and her healthcare directives. Her brother (who has lived with her her entire life and kept her in "seclusion") is taking care of her finances at this point. The lady has money and land-- and reportedly, the brother is misappropriating her funds. The stories go on and on as you can imagine.

Since Starting my own Legal Nurse Consulting business, I have run into similar situations as well, and have looked into adding guardian services to my personal business. I have spoken at length with Tim Korpatnicki of DKK Guardianship Services, inquiring how one would go about becoming a guardian.....The major problem I see is the lack of incentive and reimbursement to provide such services. I understand that the incentive is around \$38/month...if that is correct, then I can not see how or why someone would take on such an important responsibility 24 hours a day, 7 days a week.

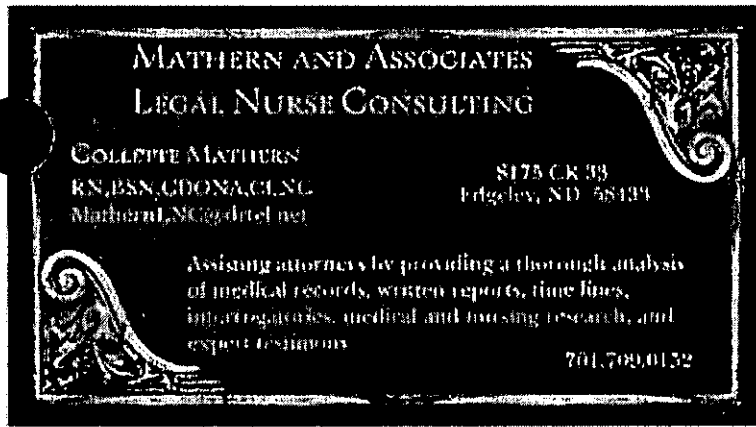
WE NEED people who are like DKK (the Korpatnickis), who truly CARE, who WANT to be of service to the vulnerable in our state, and who are willing and able to travel to meet and check in on the people they serve. At \$38 a month, nobody can do justice for our most vulnerable. Tim reports he travels constantly to court hearings, meetings at nursing centers, hospitals, etc.....None of this could possibly be accomplished on \$38/month! He is vague about how he is compensated, but I suspect there's family money and he's doing it out of the goodness of his heart. Even with 100 clients it's not enough to support a family. I would have to wonder how well someone would carry out this responsibility if they never met or got to know their clients.

Anyway, I have been thinking about this for over 2 years, and I am glad the legislature is finally addressing the concerns. I know that I would make an AWESOME guardian to the vulnerable-- however, at this time I am not willing to be working around the clock and "on call" 24/7 for a mere \$38/month.

Bottom line---if the state cares about it's vulnerable population (which is rapidly growing!), then it should be willing to pay more for guardianship services so that we can get the right people serving our vulnerable and powerless.

Respectfully,  
Collette Mathern

part of #2



Collette Mathern RN, BSN, CDONA, CLNC  
Mathern and Associates Legal Nurse Consulting  
701.709.0152

### GUARDIANSHIP PROGRAM 2011-2013 BIENNIUM

#### BUDGET REQUEST

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GUARDIANSHIP ASSOCIATION OF NORTH DAKOTA  
LEGISLATIVE HISTORY

The Guardianship Association of North Dakota (G.A.N.D.) was established in September 1997. G.A.N.D. 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. Encouraging the development of appropriate legislation designed to improve services to persons in need of assistance is one of the primary purposes of our organization.

From its inception, G.A.N.D. has focused its energies on developing legislation related to three issues: formation of standards of practice for guardians; expansion of guardianship services to people with mental illness, vulnerable elderly persons and individuals with traumatic brain injuries; and establishment of an ongoing funding source for services.

During the 1999 Legislative Session, G.A.N.D. testified on behalf of two bills and a concurrent resolution. House Bill 1301 proposed the creation of a guardianship service system that would be similar to the system that is in place for people with developmental disabilities. The bill also addressed the need for provider standards, staff competency, accreditation standards and the use of an emergency funding procedure to cover the costs of establishing needed guardianships. An appropriation of \$878,272 from the general fund was included in the bill. House Bill 1302 asked for an appropriation of \$50,000 for the provision of volunteer guardianship services. House Concurrent Resolution 3016 asked that the Legislative Council study the qualifications, standards and the monitoring requirements for guardianship services for incapacitated persons. Unfortunately, all three pieces of legislation failed to pass. However, G.A.N.D. did succeed in educating legislators about guardianship and the gaps in our current system.

G.A.N.D. was also very active in its support of two bills during the 2001 Legislative Session. Senate Bill 2329 asked for an appropriation of \$440,000 for the development of a guardianship service system for vulnerable adults who are not developmentally disabled and an appropriation of \$50,000 for the provision of volunteer guardianship services. House Bill 1388 again addressed the need for standards of practice for guardians in accordance with the National Guardianship Association's standards of practice. In spite of the many efforts of G.A.N.D.'s membership, the Legislature failed to pass these bills. However, G.A.N.D.'s lobbying and educational efforts were not wasted as legislators were becoming more knowledgeable about guardianship needs in North Dakota.

As G.A.N.D. began strategizing and preparing for the 2003 Legislature, it was decided that pursuing funding for any new guardianship services would be ineffective due to the state's poor fiscal outlook. Instead, G.A.N.D. was instrumental in the development of Senate Concurrent Resolution 4008. This resolution asked the Legislative Council to study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals

and individuals with traumatic brain injuries. Many members of G.A.N.D. testified in support of SCR 4008 and our efforts were rewarded by the successful passage of SCR 4008 in the 2003 Legislature. When the Legislative Council convened in May 2003, SCR 4008 was chosen as one of its studies. The Legislative Council assigned the guardianship study to the Interim Criminal Justice Committee. G.A.N.D. has taken the lead and organized the North Dakota Guardianship Task Force. It is hoped that the Interim Criminal Justice Committee will work together with the Task Force and G.A.N.D. to thoroughly study guardianship issues in the next 18 months. It is G.A.N.D.'s goal to have proposed legislation regarding needed guardianship services, funding and standards of practice ready for the 2005 Legislature.



## FINAL 2005 LEGISLATIVE UPDATE

When the 2005 legislative session began in January, it held so much promise to significantly improve guardianship services on behalf of individuals with severe mental illness, vulnerable elderly persons and people with traumatic brain injuries. From August 2003 to August 2004, GAND and the ND Guardianship Task Force worked very closely with the Interim Criminal Justice Committee as it studied the availability of guardianship services in North Dakota and the need for standards of practice for guardians. In August 2004, the Task Force submitted proposed legislation to the Interim Criminal Justice Committee. We were thrilled when the committee made a unanimous "Do Pass" recommendation! Senate Bill 2028 was the end result of 18 months of non-stop work by the Task Force. SB 2028 included an appropriation of \$772,550 for the creation of a guardianship service system for vulnerable people, the development of a volunteer training program for guardians and the development of standards of practice for guardians. SB 2028 funded to very important components: direct, day-to-day guardianship services; and petitioning costs related to the establishment of a guardianship. At the 2005 Legislature, the first hearing for this comprehensive guardianship bill was in front of the Senate Judiciary Committee. The committee made a "Do Pass" recommendation after which SB 2028 was sent to the Senate Appropriations Committee for review. Unfortunately, the Senate Appropriations Committee felt that the appropriation of \$772,550 was too high and it reduced the appropriation to \$40,000. SB 2028 was then transferred to the House. Task Force members spent hours testifying, sending e-mails and talking to legislators in an attempt to increase funding. The House eventually passed SB 2028 but the appropriation remained at \$40,000. The Governor has signed SB 2028 and we are currently waiting to see how the Department of Human Services will respond to the bill. Even though the funding has been greatly reduced, there is good news: our bill was not vetoed; and guardianship is now a line item in the ND Department of Human Services budget. I am already looking forward to the 2007 legislative session so we can continue our mission of improving guardianship services in our state. I receive too many heartbreaking phone calls from hospitals, nursing homes and family members as they search for guardianship services for their vulnerable patient, resident or loved one. Because of the tremendous work of GAND and the Task Force at the 2005 Legislature, we now have our foot in the door and we will continue to build from there!

I would like to take a moment to thank the members of the Task Force. The Task Force met at least once or twice a month for 18 months and, through their hard work and dedication, SB 2028 became a reality. I would like to thank Rodger Wetzel, St. Alexius Medical Center, for co-chairing the Task Force and for his frequent testimony throughout the legislative process. I am also very grateful to all of the Task Force members who volunteered countless hours to improve guardianship services in North Dakota. In addition to serving on the Task Force, members often testified at committee hearings and/or contacted legislators in person or by e-mail to support our guardianship bill. These very special people include: Mel Webster (Attorney at Law), Ted Gladden (State Court Administrator), Bruce Murry (Protection & Advocacy Attorney), Bill Chaussee (Guardian and Protective Services), Shelly Peterson (ND Long-Term Care Association),

Sandi Tabor (Attorney General's Office), Paul Griffin (Partners, Inc.), Marlowe Kro (AARP), Honorable Burt L. Riskedahl (District Court Judge), Helen Funk (Aging Services Division at DHS), Mary Simonson (Open Door Center, Carol Watrel (volunteer guardian), M.C. Brown (Medcenter One), Cindy Lien (ND State Hospital) and Cindy Sheldon (NDAD). Again, I would like to thank all of you for your gifts of time and talent to the Task Force.

And finally, on behalf of GAND and the Task Force, I would like to express our sincere appreciation to Tom Tupa and his staff from APT, Inc. Tom and his staff facilitated the efforts of the Task Force from its inception in July 2003 until the completion of the 2005 Legislature. Tom's expertise and leadership made a huge difference in our success with the legislature. In the past, GAND has approached the ND Legislature with a number of guardianship bills but we were always unsuccessful. With Tom's direction, we succeeded in having a bill successfully pass through the Legislature. Again, we are very thankful to Tom for his help and guidance through the exciting (and exhausting) legislative process!!

Donna Byzewski, GAND President

11.0021.03002  
Title.

Prepared by the Legislative Council staff for  
Senator J. Lee

April 14, 2011

#1

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1199

That the Senate recede from its amendments as printed on page 1429 of the House Journal and page 857 of the Senate Journal and that Reengrossed House Bill No. 1199 be amended as follows:

Page 1, line 2, after "state" insert "; and to provide an appropriation"

Page 1, after line 14, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

#1

PROPOSED AMENDMENTS TO HB 1199

That the Senate recede from its amendments as printed on page 1429 of the House Journal and page 857 of the Senate Journal and that Reengrossed House Bill No. 1199 be amended as follows:

Page 1, line 2, after "state" insert "; and to provide an appropriation"

Page 1, after line 14, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is to be considered one-time funding and is not considered to be base funding for the 2013-15 biennium."

Renumber accordingly