

Testimony
Department of Human Services
Human Services Committee – Study on Guardianship Services
Representative Alon Wieland, Chairman
August 2, 2011

Chairman Wieland, members of the Human Services Interim Committee, I am Jan Engan, Director of the Aging Services Division with the Department of Human Services (DHS). I am here today to provide information about the committee's study of guardianship services.

As individuals age or experience physical or mental health challenges during their lives, some will no longer be able to manage their affairs, or be capable of communicating choices or making important decisions for themselves. With the projected increase in the number of older adults in North Dakota, it can be expected there may be an increased demand for guardianship services. Guardianship is a process that is addressed through the courts. Any person interested in the well-being of an individual who demonstrates the inability to care for himself or herself or appears to be at risk of emotional, physical, or financial danger may petition the court for the appointment of a guardian. Once a petition is filed, the court sets a hearing date on the issues of incapacity, appoints an attorney to act as guardian ad litem, appoints a physician or clinical psychologist to examine the proposed ward and appoints a visitor to interview the proposed guardian and proposed ward. It is important to stress that from the beginning the pursuit of guardianship should be done only when alternative, less restrictive options such as North Dakota's Informed Healthcare Consent Law, health care directives, representative payee, power of attorney, co-signers, supportive services, and residential placements have been tried and were unsuccessful or not appropriate.

The process as outlined above appears to be a relatively straightforward process. There are however, issues such as having the financial ability to pay for the costs of petitioning for guardianship, or the costs associated with attorney fees, medical fees, and "visitor" fees. Another issue is the ability to secure a guardian. Based on a survey completed in 2004 by the North Dakota Guardianship Task Force, 50 percent of those responding indicated difficulty in finding individuals who are willing to serve as guardians. Generally family members are the first choice to be a guardian, yet this is not always possible because family members live out of state, have personal health concerns, or are unavailable to do this task. A public administrator may be assigned; however, availability of a public administrator is not consistent across the state. Private or non-profit entities may provide this service; yet in the case of these examples, there is limited funding available to fulfill the role of a guardian.

Being a guardian is more than an appointment or a signature on a dotted line. A guardian is required to act in and represent the best interests of the ward, to protect the ward and the ward's rights, and to ensure services are provided in the most normal and least restrictive means possible. Doing this does require time in seeking and arranging for services that might include working with physicians, case managers, social workers, pastors, law enforcement, and community organizations for shelter, transportation, or meals to name a few. Lack of funds, the amount of time needed, and having adequate knowledge about the process are recognized as being barriers to being a guardian. Currently, no formal training is available for family members or others who are willing to become guardians. A Guardianship Handbook is available to provide background information about guardianship and to answer frequently asked questions such as: "As a guardian, am I financially responsible for my ward?".

In the 2005-2007 biennium, \$40,000 was appropriated for the purpose of guardianship services for vulnerable adults who are not developmentally disabled. There were many requirements attached to the appropriation including training, establishment of a volunteer program, etc. A small work group determined that priority for the establishment of guardianship should be given to the following client groups: persons with severe mental illness, persons with traumatic brain injury, and persons over the age of 60. An appropriation of \$40,000 was again approved by the legislature for the 2007-2009 biennium. Twice the Department of Human Services requested proposals to accomplish the services and no responses were received. DHS then attempted to contract with a private organization for guardianship services and was unsuccessful.

Input from many sources suggested the appropriation be used to pay for the cost of the establishment of guardianship. The cost of \$2,500 per guardianship was established, and the program was implemented in 2007. In addition to the eligibility criteria previously stated, the work group developed guardianship standards, protocols, and the handbook. The service is established to work in a collaborative manner where all potential wards must have a case manager. A request for funds to pay for petitioning costs comes to Aging Services for discussion and payment approval. Funds are used for petitioning costs and include attorney fees, guardian ad litem and court visitor costs. The number of guardianships established per biennium was:

- 2005-2007 Biennium – 10
- 2007-2009 Biennium – 29
- 2009-2011 Biennium – 29

Petitioning costs vary depending on the ability to obtain pro bono services, with the average cost being \$1,320, rather than the initial estimate of \$2,500.

Subsidized guardianship is a well-established program within the child welfare system. In North Dakota, the subsidized guardianship program administered through the Children and Families Services Division of the Department of Human Services 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. A small \$500 annual payment to guardians as established in the 2009-2011 Biennium through House Bill 1199 and will assist in offsetting some of the costs associated with being a guardian.

Situations will continue to occur when an adult is unable to make decisions about health, safety, or financial concerns. If guardianships are not available or accessible, there is an increased risk of vulnerability. Any system that is established to address guardianship must assure that appointed guardians serve in the best interests of those they are appointed to care for and protect.

Thank you. I am available for any questions you may have.