

HUMAN SERVICES COMMITTEE
Representative Alon Wieland, Chairman
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**Executive Summary: Study of Guardianship Services for
Vulnerable Adults in North Dakota**

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Scope of the Study

The study addresses “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; the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services; the efficacy of statutes governing public administrator services; and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.”

**I. The Need for Guardianship Services in North Dakota –
Review the Number of Guardians Appointed by the Courts
and Identify the Unmet Need for Guardian Services**

A. Number of Guardians Appointed by the Courts

There were 2,038 guardianship and conservatorship cases in North Dakota in 2010. There were 323 new filings in 2010 and an average of 311 new appointments per year from 2008-2010.

B. Unmet Need for Guardian Services: Quantity

A projected total population-based need for plenary public guardian services in North Dakota is 751 individuals.

The Developmental Disabilities Division contracts with Catholic Charities North Dakota to serve 414 wards in the 2011-2013 biennium. The Aging Services Division reports funding for assistance (petitioning and other related costs) with the establishment of 32 guardianships in the current biennium, and “a modest annual payment” for 16 appointed guardians in the first year and 32 appointed guardians in the second year.

This leaves a projected total population-based unmet need for plenary public guardian services in North Dakota at 305 individuals.

The unmet need for plenary public guardian services in North Dakota based on survey responses is 149 individuals (25 people with developmental disabilities on the Catholic Charities waiting list; 7 adults in Assisted Living Facilities; 44 adults in Basic Care Facilities; 64 adults in Nursing Facilities; 9 adults in the State Hospital). The difference of 156 individuals may be accounted for by such factors as: (a) the 79% to 69% response rate for the Long Term Care Association survey; (b) limited community hospital unmet need information (e.g., estimated 15-20 individuals per year in one Fargo area hospital); (c) the transient and homeless populations; and (d) some of the 149 individuals may be accounted for by the 232 (296 minus 64) adults in Nursing Facilities who do not have a guardian but need a guardian and reportedly have willing and responsible family members or friends or resources to employ a guardian.

The unmet need for plenary public guardian services in North Dakota is 305 individuals.

C. Unmet Need for Guardian Services: Guardianship Standards

1. Guardianship Staff-to-Client Ratio

One of North Dakota's principal corporate guardianship programs reports a guardianship staff-to-client ratio of 1:36-39 (1:40 as of 7/1/09). One of the several public administrators serving as guardian reports a part-time guardian caseload ranging from 22 to 29 with wards housed 210 miles apart.

There is an unmet need for guardian services in North Dakota to reduce the staff to client ratio to 1:20.

2. Guardian Visitation-of-Ward Standard

A North Dakota Olmstead Commission Work Group and the North Dakota Aging Services Division developed and published the *Guardianship Handbook: A Guide for Court Appointed Guardians in North Dakota* (Dec. 2008), which cites *North Dakota Guardianship: Standards of Practice for Adults* as a source to explain the expectations and responsibilities of being a guardian. North Dakota Guardianship (NDG) Standard 13(V) prescribes that the guardian of the person

"shall visit the ward monthly." NDG Standard 23(III) states that "The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers."

North Dakota guardians and guardian organizations seem challenged to comply with the ward visitation standard with currently available resources for public guardianship.

3. Licensing, Certification, or Registration of Professional Guardians

On the subject of guardian standards, the Second National Guardianship Conference recommends, "Professional guardians — those who receive fees for serving two or more unrelated wards — should be licensed, certified, or registered."

There are 15 states with some provision for guardian licensing, certification or registration. For example, the Certified Professional Guardian Board in the state of Washington has formal legal responsibility for certification applications, standards of practice, training, recommendation and denial of certification, continuing education, grievances and disciplinary sanctions, and investigation of certified professional guardians. These responsibilities include regulation and formal standards of practice for many of the interactions between certified professional guardians (including the public guardians who are required to be certified) and the courts, counties, state agencies, and guardianship organizations and agencies in the state.

Some of the guardianship stakeholders interviewed expressed some concerns about oversight and monitoring of guardians and guardian annual reports, and lack of such requirements as criminal background checks and credit checks.

As recommended by the Wingspan Implementation Session, North Dakota "should enact a statutory framework to require education and certification of guardians as well as continuing education within the appointment process to ensure that all (*i.e.*- professional and family) guardians meet core competencies." As recommended by the Wingspan national guardianship conference, North Dakota should "adopt minimum standards of practice for guardians, using the National Guardianship Association Standards of Practice as a model."

II. The Establishment of Guardianships - Review the Services Available for Assistance with the Establishment of Guardianships and the Process for the Establishment of Guardianships and Recommend Proposed Changes

The Aging Services Division reports funding for assistance (petitioning and other related costs) with the establishment of 32 guardianships in the current biennium.

Some of the guardianship stakeholders interviewed expressed some concerns with the judicial process for the establishment of guardianships. Concerns included but were not necessarily limited to the following: no mandatory reporting of vulnerable adult abuse and neglect; perception of less follow through or investigation in some cases (that is, disagreement about the timing and urgency for intervention); guardianship filing fees not waivable for indigents; limited legal assistance from state's attorneys or Attorney General attorneys for petitioners in indigent cases; no right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel; some proposed wards reportedly not present at hearings in some courts; and, appointment of "emergency" guardians without notice and a hearing for up to ninety days.

The following recommendations are based on the concerns expressed by some of the guardianship stakeholders with the judicial process for the establishment of guardianships.

A. Mandatory Reporting of Vulnerable Adult Abuse and Neglect.

Recommendation: North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect. See section VI.B.2. for statutory language.

B. Right to Counsel; Legal Counsel for Indigents

Recommendation: North Dakota should adopt model recommendations regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing. See section VI.B.4. for statutory language.

C. Emergency Guardian

Recommendation: North Dakota should adopt section 311 of the Uniform Guardianship and Protective Proceedings Act related to

emergency guardian. See section VI.E.2. for statutory language.

III. Petitioning and Other Costs - Identify Petitioning and Other Costs Associated with Providing Guardianship and Public Administrator Services and Financial Assistance Available

The Aging Services Division reports that the average cost of petitioning was \$1,474 in the previous biennium compared to the initial estimate of \$2,500, and depending on the ability to obtain pro bono services. Also, provisions in 2011 HB 1199 provided 16 guardians "a modest annual payment of \$500" to offset some guardian costs, 32 guardians in year two of the biennium. The Developmental Services Division reports \$2,052,416 for 414 wards during the 2011-2013 biennium, including \$51,720 in petitioning costs. The daily rate is \$6.52 per ward in the first year (\$2,380 per client annually), and \$6.71 per ward in the second year (\$2,449 per client annually).

There are several published studies of costs associated with providing public guardianship services.

An area of study related to costs is the extent to which guardianship is cost effective, as well as the extent to which not having sufficient guardianship services probably costs significantly more than having sufficient guardianship services.

The median intensive care unit (ICU) length of stay for incapacitated patients without a surrogate is twice as long as other ICU patients.

Without sufficient appropriate guardianship services, significant health care costs are incurred through inappropriate institutionalization, insufficient deinstitutionalization, excessive emergency care, and lack of timely health care. Guardianship studies from Florida, New York, and Virginia report annual savings by guardianship programs ranging from \$3.9 million to \$13 million.

Catholic Charities North Dakota reports residential placement moves from a more restrictive and expensive setting to a less restrictive setting for 22 guardianship clients in 2011, including seven clients moving from the North Dakota State Hospital, two clients moving from the Developmental Center, two clients moving from a nursing home to an Individualized Supported Living Arrangement (ISLA), and one client moving from a hospital to a nursing home.

IV. The Entities Responsible for Guardianship and Public Administrator Costs - Identify the Entities Currently Responsible for Guardianship and Public Administrator Costs

Entities responsible for guardianship and public administrator costs in North Dakota have included general fund appropriations to the Department of Human Services (Developmental Disabilities Division, and Aging Services Division) to contract with an entity to create and coordinate a unified system for the provision of guardianship services (a) to vulnerable adults who are ineligible for developmental disabilities case management services, and (b) to individuals diagnosed with a mental illness, traumatic brain injury, or elderly individuals age 60 years and over.

Counties have provided some appropriations for several public administrators in North Dakota.

V. The Interaction Between the Courts, Counties, State Agencies, and Guardianship Organizations Regarding Guardianship Services - Review the Duties and Responsibilities of These Entities and the Cooperation/Collaboration and Interaction Between and Among the Entities Associated with Guardianship and Public Administrator Services and Recommend Proposed Changes

Based on interviews of one to three hours with at least 22 guardianship stakeholders in North Dakota, as well as several dozen county social service directors, the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship and public administrator services seems generally good. There is apparently some tension with the counties regarding funding of public administrators appointed by presiding district judges.

The most recent national study of public guardianship found that the original taxonomy for state public guardianship programs remains appropriate: (1) a court model, (2) an independent state office, (3) a division of a social service agency, and (4) a county model.

North Dakota is currently a hybrid of the social service agency model and the county model (public administrator as guardian). Stakeholders expressed concerns about lack of uniformity and statewide coverage in guardianship services.

Recommendation: North Dakota should change from the hybrid the social service agency model and the county model (public administrator as guardian). See section VII for prioritized recommended alternatives.

VI. The Efficacy of Statutes Governing Guardianship and Public Administrator Services - Review the Statutes Governing Guardianship and Public Administrator Services, Evaluate the Effectiveness of the Statutes, and Recommend Proposed Changes

This section reviews the North Dakota statutes governing guardianship and public administrator services, evaluates the effectiveness of the statutes compared to other states and compared to national models, and makes recommendations about proposed changes, including, where appropriate or desired, alternative recommendations from which to select.

A. Type of Public Guardianship Program and Public Guardian Subjects

1. Type of Public Guardianship Program: Implicit or Explicit

North Dakota has an “implicit” statutory scheme for public guardianship.

Recommendation: North Dakota should adopt an explicit statutory scheme for public guardianship. See section VII for prioritized recommended alternatives.

2. Public Guardian Subjects

North Dakota has general fund appropriations to the Department of Human Services (Developmental Disabilities Division, and Aging Services Division) to contract with an entity to create and coordinate a unified system for the provision of guardianship services (a) to vulnerable adults who are ineligible for developmental disabilities case management services, and (b) to individuals diagnosed with a mental illness, traumatic brain injury, or elderly individuals age 60 years and over. North Dakota statute authorizes judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator in specified cases.

Recommendation: North Dakota should provide for public guardian services for all eligible incapacitated persons similarly, and

not particular public guardian services for particular diagnoses or categories. The Model Public Guardianship Act recommends the following statutory language:

Any incapacitated person residing in the state who cannot afford to compensate a private guardian or conservator and who does not have a willing and responsible family member or friend to serve as guardian or conservator is eligible for the services of the office of public guardian where the individual resides or is located.

See section VII for prioritized recommended alternatives.

B. Procedural Due Process Safeguards in Guardianship

Judicial process highlights for the establishment of guardianships and guardianship stakeholder concerns are described above in section II related to the establishment of guardianships. The significant relevant elements in guardianship and public guardianship statutes from the most recent national study of public guardianship follow.

1. Potential Petitioners

North Dakota provides that “Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian.”

Recommendation: North Dakota should adopt a prohibition against the public guardian petitioning for appointment of itself: “The office of public guardian may not initiate a petition of appointment of the office as guardian or conservator.”

2. Investigation of Vulnerable Adults in Need

Recommendation: North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect.

3. Notice and Hearing

Almost all of North Dakota’s provisions for notice are comparable to the Uniform Guardianship and Adult Protective Proceedings Act (UGAPPA). The most significant exception is the absence of provisions

for informing the proposed ward, or ward,¹ of rights at the hearing and of the nature, purpose, and consequences of appointment of a guardian.

Almost all of North Dakota's provisions for hearing are comparable to the Uniform Guardianship and Adult Protective Proceedings Act (UGAPPA).

Recommendation: North Dakota should adopt a version of UGAPPA notice provisions regarding rights at the hearing and the nature, purpose, and consequences of appointment of a guardian: "The notice must inform the ward or proposed ward of the ward or proposed ward's rights at the hearing and include a description of the nature, purpose, and consequences of an appointment of a guardian."

4. Right to Counsel; Legal Counsel for Indigents

Some of the North Dakota guardianship stakeholders interviewed expressed some concerns with no right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel. Procedural due process safeguards in guardianship are meaningless without counsel to exercise the safeguards: "there is a growing recognition of the 'right to counsel' as an empty promise for a vulnerable indigent individual. Thus, over 25 states require the appointment of counsel, generally making counsel available without charge to indigent respondents."

Counsel for all proposed wards would probably facilitate negotiation, settlement, and achievement of more cost effective, least restrictive alternative, resolution for the proposed ward.

Recommendation: North Dakota should adopt model recommendations regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing.

¹ The Third National Guardianship recommends, "Where possible, the term person under guardianship should replace terms such as incapacitated person, ward, or disabled person." Third National Guardianship Summit: Standards of Excellence, Recommendation #1.7 (2011), available at <http://www.guardianshipsummit.org/summit-guardian-standards-and-recommendations/>

See also La Forge, "Preferred Language Practice in Professional Rehabilitation Journals," 57 (1) *The Journal of Rehabilitation* 49-51 (1991); Texas Council for Developmental Disabilities, People First Language - Describing People with Disabilities, available at <http://www.txddc.state.tx.us/resources/publications/pfanguague.asp>

5. Right to Jury Trial

Since 1981, the number of states that provide a right to a jury trial in guardianship proceedings has gone from 11 to 27 states, not including North Dakota. Recommendations for the right to a jury trial in guardianship proceedings range from Regan and Springer to the U.S. Senate Special Committee on Aging in 1977 to the Model Public Guardianship Act in 2010: "The AIP [alleged incapacitated person] shall have the right to trial by jury."

Recommendation: North Dakota should adopt a right to trial by jury in guardianship proceedings.

6. Cross Examination; Standard of Proof; Appeal/Review

Cross Examination. Since 1981, the number of states that provide a right to cross-examination in guardianship proceedings has gone from only nine states to 35 states, including North Dakota.

Standard of Proof. Thirty-six states, including North Dakota, require "clear and convincing evidence" as the standard of proof in guardianship proceedings. New Hampshire requires "beyond a reasonable doubt." North Carolina and Washington use "clear, cogent, and convincing evidence." The Model Public Guardianship Act recommends "clear, unequivocal, and convincing evidence" as the standard of proof.

Appeal/Review. Since 1981, the number of states that provide a right to appeal in guardianship proceedings has gone from only three states to at least 29, including North Dakota.

Recommendation: North Dakota should consider changing the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."

C. Assessment of Alleged Incapacitated Person, Civil Liberties, Selection of Guardian

1. Medical Examination; Psychological Examination; Other Examination

The determination of capacity of older adults in guardianship proceedings has received book-length treatment in a collaboration of the American Bar Association Commission on Law and Aging, the American Psychological Association, and the National College of

Probate Judges. Clinical examinations are important evidence for judicial determinations of legal incapacity. At least 40 states, including North Dakota, provide for examination of the proposed ward by a physician, and 31 states, including North Dakota, specifically include a psychologist.

Unfortunately, the available research finds significant problems with clinical evidence in guardianship proceedings for older adults. Much clinical evidence is incomplete. The mean length of written clinical reports for guardianship of older adults ranges between 83 words in Massachusetts (with two-thirds of the written evidence illegible) and 781 words in Colorado (one to three pages) compared to 24 pages for the mean length of child custody evaluations. Several North Dakota stakeholders report difficulties with insufficient physician specialists for clinical evaluations in guardianship proceedings.

Recommendation: North Dakota should consider adopting the Model Public Guardianship Act provision regarding evaluation in guardianship.

2. Civil Liberties Preserved

Compared with only 10 states in 1981, at least 27 states, including North Dakota, have a statutory provision aimed at preserving civil rights under guardianship. Such provisions state that the individual under guardianship “retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted by order to the guardian by the court.”

3. Who Serves as Guardian—General Probate Priority; Input by Alleged Incapacitated Person

For the question of who may be guardian, most states, including North Dakota, use a priority hierarchy of the incapacitated person’s nominee, spouse, adult child, parent, relative, or friend (“the usual probate priority scheme”). The North Dakota statute is sensitive to the conflict of interest posed by an employee of an agency, institution, or nonprofit group home providing direct care to the proposed ward also serving as guardian. However, the practice is allowed if the court “makes a specific finding that the appointment presents no substantial risk of a conflict of interest.”

As recorded above in section I.C.3., some of the North Dakota guardianship stakeholders interviewed expressed some concerns about

oversight and monitoring of guardians and guardian annual reports, and lack of such requirements as criminal background checks and credit checks. Twenty-seven states, not including North Dakota, have specific guardian background requirements like a credit check, or disqualify felons from serving as guardian. The U.S. Government Accountability Office recently reported

hundreds of allegations of physical abuse, neglect, and financial exploitation of wards by guardians in 45 states and the District of Columbia, between 1990 and 2010. In 20 selected closed cases from 15 states and the District of Columbia, GAO found that guardians stole or improperly obtained \$5.4 million from 158 incapacitated victims, many of them seniors. GAO's in-depth examination of these 20 closed cases identified three common themes: 1) state courts failed to adequately screen the criminal and financial backgrounds of potential guardians; 2) state courts failed to adequately monitor guardians after appointment, allowing the continued abuse of vulnerable seniors and their assets; and 3) state courts failed to communicate ongoing abuse by guardians to appropriate federal agencies like the Social Security Administration (SSA), the Department of Veterans Affairs (VA), and the Office of Personnel Management (OPM), which manages federal employee retirement programs. Guardians serve as federal representative payees on one percent of SSA cases, 13 percent of VA cases, and 34 percent of OPM cases.

Recommendation: North Dakota should require the information in the petition for appointment of a guardian, and in the visitor's report, about the qualifications of the proposed guardian to include the results of fingerprint, criminal history, and credit background checks before appointment of a guardian.

D. Powers and Duties of Public Guardians

1. Specified Agency as Public Guardian

At least 44 states specify a particular agency to serve as public guardian. North Dakota authorizes "[a]ny appropriate government agency, including county social service agencies" to serve as guardian as eighth priority, except that "No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian." North Dakota statute also authorizes

judicial appointment of a county public administrator, who may be a corporation or limited liability company, with duties and powers to serve as ex officio guardian and conservator without application to court or special appointment in specified cases.

Recommendation. North Dakota should specify one public guardian agency to serve as public guardian. See section VII for prioritized recommended alternatives.

2. Conflict of Interest Raised/Remedied

In reviewing the extent to which public guardianship assists or hinders vulnerable adults in securing access to rights, benefits, and entitlements, a core conclusion of the U.S. Administration on Aging-funded first national public guardianship study was that success is dependent on the clear consideration that “The public guardian must be independent of any service providing agency (no conflict of interest).”

Recommendation. North Dakota should make the office of public guardian independent from all service providers. See section VII for prioritized recommended alternatives.

3. General Probate Powers for Public Guardians

While most state statutes provide that the public guardian has the same duties and general probate powers as any other guardian, many state statutes list additional duties and powers for the public guardian.

For example, mandatory duties may include specifications about visits to the [incapacitated person]. At least eight states dictate the frequency of public guardianship [incapacitated person] visits or contacts. A few states require the public guardianship program to take other actions, such as developing individualized service plans, making periodic reassessments, visiting the facility of proposed placement, and attempting to secure public benefits.

Recommendation. North Dakota guardians and guardian organizations should comply with the ward visitation standards, North Dakota Guardianship (NDG) Standard 13(V) that the guardian of the person “shall visit the ward monthly” and NDG Standard 23(III) that

"The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers."

Recommendation. North Dakota should list additional duties and powers for the public guardian modeled after those in the Model Public Guardianship Act. See section VII for duties and powers for the public guardian.

E. Additional Guardianship Provisions

The 2010 national public guardianship study of additional guardianship elements (e.g., provision for termination; restoration; incapacitated person petition; annual report; emergency guardian; temporary guardians; limited guardian) shows that North Dakota joins most states in addressing all of these elements. Stakeholders highlighted several concerns.

1. Annual Report

Some of the guardianship stakeholders interviewed expressed some concerns about oversight and monitoring of guardians and guardian annual reports. Unlike a number of states, North Dakota does not have statutory provision for active court review of annual reports. There is an extensive literature and numerous national recommendations about changing from passive court monitoring to active court monitoring. Annual reports are the sole means of accountability for guardianships. Without the timely filing and active review of annual reports for accuracy and comprehensiveness, there is little guardianship accountability.

Recommendation. North Dakota should establish a system for active monitoring of guardianship annual reports, including filing and review of annual reports and plans.

2. Emergency Guardian

Several of the guardianship stakeholders interviewed expressed significant concerns with the temporary guardian statute. Compared with the emergency guardianship statutes in other states, North Dakota lacks the following statutory provisions for temporary (emergency) guardianship: (a) required petition details; (b) notice required; (c) specific language about the right to a hearing pre and

post order; (d) right to counsel at the hearing; (e) presence of the proposed ward at the hearing; (e) limited duration (North Dakota allows up to 90 days; several states allow no more than 10 days); (f) specific language about the standard of proof.

An important issue “is that due process safeguards for emergency guardianship typically are less than for permanent guardianship, yet emergency guardianship is often a door to the more permanent status [as reported in North Dakota]. Thus, some individuals may end up in a guardianship with less than full due process protection.” At least one federal district court ruled a state emergency guardianship statute unconstitutional because it lacked sufficient due process protection.

Recommendation. North Dakota should adopt section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardian.

VII. Methods for the Timely and Effective Delivery of Guardianship and Public Administrator Responsibilities and Services - Determine the Appropriate Duties and Responsibilities for Entities Involved in Guardianship Services, Financial Responsibilities, and the Appropriate Role for Public Administrators in Providing Guardianship Services. Provide Estimated Costs for Guardianship Services for the 2013-15 Biennium by Recommended Entity Responsible for These Costs.

A. North Dakota’s Current Provisions for Guardianship and Public Administrator Responsibilities and Services

North Dakota has statutory provisions for (a) guardianship of incapacitated persons, and, (b) like a number of other states (e.g., Arizona, California, Michigan, Missouri, Nevada) for county public administrators. North Dakota statute identifies who may be judicially appointed as guardian, including a nonprofit corporation and an appropriate government agency, and the general court-specified powers and duties of a guardian to the ward. North Dakota statute also authorizes judicial appointment of a county public administrator, who may be a corporation or limited liability company, with duties and powers to serve as ex officio public special administrator, guardian, and conservator without application to court or special appointment in specified cases.

B. Extent of Coverage for Guardianship and Public Administrator Responsibilities and Services

Twenty-eight (53%) of North Dakota's 53 counties apparently do not have a public administrator. The 2010 census population of the 28 counties is 151,026, which is 22.5% of North Dakota's population of 672,591.

One non-profit corporation, with offices in Bismarck (Burleigh County), is reportedly the public administrator for 12 counties. These 12 counties have a 2010 census population of 147,799 (21.9% of the state population) and cover an area of 16,031 square miles (23.2% of the state).

One of North Dakota's principal corporate guardianship programs reports a guardianship staff-to-client ratio of 1:36-39 (1:40 as of 7/1/09), compared with the recommended 1:20 ratio. One of the several public administrators serving as guardian reports a part-time guardian caseload ranging from 22 to 29 with wards housed 210 miles apart.

C. Recommended Prioritization of Public Guardianship Models for North Dakota

There are four models for public guardianship nationally: (1) a court model, (2) an independent state office, (3) a division of a social service agency, and (4) a county model. North Dakota is currently a hybrid of the social service agency model and the county model (public administrator as guardian). Stakeholders expressed concerns about lack of uniformity and statewide coverage in guardianship services.

I recommend the following prioritization of models for the timely and effective delivery of public guardianship services in North Dakota.

1. Independent State Office (modeled after the Commission on Legal Counsel for Indigents, N.D. Cent. Code chapter 54-21)

2. County Model

The dearth of public administrators in North Dakota's counties suggests that delivery of public administrator responsibilities and services is currently untimely and ineffective.

Recommendation. Timely and effective public administrator

responsibilities and services appear to require replacement of uneven county funding with state funding of a public administrator in each of North Dakota's 53 counties at a funding level that would reduce guardianship caseload ratio from the reported 1:22-29 on a part-time basis to a 1:20 staff-to-client ratio on a full-time basis.

3. Alternative County Model

4. Judicial Model

D. Estimated Costs

The Developmental Services Division reports \$2,052,416 for 414 wards during the 2011-2013 biennium, including \$51,720 in petitioning costs. The daily rate is \$6.52 per ward in the first year (\$2,380 per client annually), and \$6.71 per ward in the second year (\$2,449 per client annually).

The current unmet need for plenary public guardian services in North Dakota based on survey responses is 149 individuals (25 people with developmental disabilities on the Catholic Charities waiting list; 7 adults in Assisted Living Facilities; 44 adults in Basic Care Facilities; 64 adults in Nursing Facilities; 9 adults in the State Hospital).

The estimated costs for guardianship services for the 2013-15 biennium based on the Developmental Services Division private contractor model for the 414 wards of the 2011-2013 biennium follow, plus the 149 individuals currently in need of plenary public guardian services follow:

\$1,044,170	414 wards at \$6.91 ² daily rate (2013-2014)
\$375,800	149 wards at \$6.91 daily rate (2013-2014)
\$1,074,392	414 wards at \$7.11 ³ daily rate (2014-2015)
\$386,677	149 wards at \$7.11 daily rate (2014-2015)
<u>\$53,225⁴</u>	<u>petitioning costs</u>
\$2,546,082	TOTAL

The estimated costs for guardianship services for the 2013-15 biennium based on the Developmental Services Division private

² Calculated at 2.91% increase to the 2012-2013 rate, the same percent increase as the \$6.52 to \$6.71 increase for 2012-2013.

³ Calculated at 2.91% increase to the 2013-2014 rate, the same percent increase as the \$6.52 to \$6.71 increase for 2012-2013.

⁴ Calculated at 2.91% increase to the 2011-2013 amount.

contractor model for the 156 wards of the additional unmet need follow:

\$393,455	156 wards at \$6.91 daily rate (2013-2014)
\$404,843	156 wards at \$7.11 daily rate (2014-2015)
<u>\$53,225</u>	<u>petitioning costs</u>
\$851,523	TOTAL for 156 wards

These estimated costs are for a staff to client ratio of 1:36-39. The recommended ratio is 1:20.

The Office of Public Guardianship in the state of Washington's Administrative Office of the Courts contracts with certified professional guardians to provide public guardianship services for a daily rate of \$10.68 per ward (not to exceed \$325 per month, \$525 per month in the first three months of a case; \$3,900 per year) with a required staff to ward ratio of no more than 1:20. The certified professional guardians providing public guardianship services also comply with the minimum monthly ward visit standard.

The estimated costs for guardianship services for the 2013-15 biennium based on the 1:20 staff-to-ward ratio private contractor model for the 414 wards of the 2011-2013 biennium follow, plus the 149 individuals currently in need of plenary public guardian services follow:

\$1,613,855	414 wards at \$10.68 daily rate (2013-2014)
\$530,832	149 wards at \$10.68 daily rate (2013-2014)
\$1,660,699	414 wards at \$10.99 ⁵ daily rate (2014-2015)
\$597,691	149 wards at \$10.99 daily rate (2014-2015)
<u>\$53,225⁶</u>	<u>petitioning costs</u>
\$4,456,302	TOTAL

Recommendation: This is the estimated cost for guardianship services for the 2013-15 biennium based on the recommended 1:20 staff-to-ward ratio private contractor model for the 414 wards of the 2011-2013 biennium, plus the 149 individuals currently in need of plenary public guardian services.

⁵ Calculated at 2.91% increase to the 2013-2014 rate, the same percent increase as the \$6.52 to \$6.71 increase for 2012-2013.

⁶ Calculated at 2.91% increase to the 2011-2013 amount.

The Washington State Institute for Public Policy evaluated the costs and benefits of the public guardianship program in Washington over a 30-month period. The study found that while the average public guardianship cost per client over the 30-month period was \$7,907, the average decrease in residential costs per client from moves to less restrictive environments was \$8,131 (an average savings per client of \$7.47 per month, \$0.25 per day).

Based on these reported savings, the estimated costs for North Dakota persons without timely and effective guardianship services at a 1:20 staff-to-ward ratio follow:

\$1,651,632	414 persons at \$10.93 daily rate (2013-2014)
\$594,428	149 persons at \$10.93 daily rate (2013-2014)
\$1,698,476	414 persons at \$11.24 daily rate (2014-2015)
<u>\$611,287</u>	<u>149 persons at \$11.24 daily rate (2014-2015)</u>
\$4,555,823	TOTAL

The estimated costs for the 156 individuals of the additional unmet need without timely and effective guardianship services at a 1:20 staff-to-ward ratio follow:

\$622,354	156 persons at \$10.93 daily rate (2013-2014)
<u>\$640,006</u>	<u>156 persons at \$11.24 daily rate (2014-2015)</u>
\$1,262,360	TOTAL for 156 persons

These conservative savings from decreased average residential costs do not include the savings reported by the Washington State Institute for Public Policy from decreased personal care hours for public guardianship clients (an average of 29 hours per client per month) compared with an increase in care hours for similar clients without a public guardian. The Washington study also reported that 21% of public guardianship clients showed improvement in self-sufficiency (e.g., decreasing dependence on personal caregiver or nurse) during the 30-month period.

Thank you for the opportunity to study guardianship services for vulnerable adults in North Dakota.