

**Interim Human Service Committee**  
**August 30, 2012**  
**Testimony regarding Public Guardianship Structure**  
**By Kathy Hogan, Representative District 21**

Chairman Wieland, members of the committee, for the record my name is Kathy Hogan, I represent District 21, downtown Fargo. Regretfully, I am unable to attend today's meeting but I have asked Roxanne to present this testimony and a group of professional from Region Five, led by Kirsten Hasbargen, Director of Richland County Social Services are available to answer questions.

Since the July meeting, there have been a number of informal meetings to look at the recommendations of the Schmidt Guardianship report and to discuss ways of implementing public guardianship services for low income elderly and disabled individuals. Three basic assumptions were used in these discussions. Those assumptions were:

- 1) Integrate a program into existing structures including human services and the courts;
- 2) Start small to develop the system gradually;
- 3) Limit the program to low income elderly and disabled individuals.

This proposal has been shared with representatives of the ND Supreme Court, ND Department of Human Services, local providers in Region Five, the ND Long Term Care Association and several legislators on this committee. Their feedback and suggestions have been included in these recommendations. You are seeing the 4<sup>th</sup> draft of the proposal. (Appendix A)

The proposal has four components:

1. Adult Protection to screen and work with potential guardianship recipients to find appropriate services and alternatives to public guardianship such as family/friends
2. Filing of guardianship petitions and visitor's reports to the court system
3. Direct provision of Guardianship services
4. Court training and monitoring of problem guardianship situations

Let me briefly review each of the various components.

### **Adult Protection**

The process of assessing the needs of a vulnerable individual including their financial situation and gathering information regarding family and community resources to serve as guardianship is both complex and time consuming and typically a task that falls to Adult Protective Services. In North Dakota today the state funds 4 Full time staff usually through the human service centers. In Region 5, the counties fund an additional 2 Adult Protection positions. Mr. Schmidt recommended that ND adopt mandatory adult protective services reporting as most states have. I am not recommending that because it would require between 24 and 36 new positions state wide. I am recommending 12 FTE's. Originally, 16 FTE's were recommended but the number was reduced to keep with the theme of start small and build the system based on actual need.

Attached is a summary of a separate proposal developed a group from Region Five to fully fund an adult protection system and on it provides several case examples. (Appendix B)

### **Petition filing**

This proposal simply expands the current Department of Human Services structure for funding the legal preparation costs for petitions and it proposes broadening the definition of who can receive those services. Current the program focuses on persons with serious mental health issues or aged but it would still be limited to low income (under 125% of poverty) and to persons with a disability or age related limitations.

### **Direct provision of guardianship services**

I suggest the same model for the direct provision of guardianship services as is used for persons with a development disability. This model has proved effective



for many years. I recommend a higher daily rate reimbursement because in the DD system, every individual serviced through the guardianship program automatically has a case manager through a human service centers. Individuals served through this program will not automatically have a case manager and therefore the guardian may be required to provide additional services. I have not established a minimum or maximum caseload standard but funding for this position would result in approximately a 1 to 25-30 caseload ratio. As you heard at the July meeting there are currently 4 to 5 private agencies/individuals providing this service primarily to those individuals with financial resources and if funding were available I believe the service could be developed statewide.

### **Court monitoring of Guardianship Services**

To fully fund court monitoring for all guardianship cases would require significant staff for the court. Rather than fully fund this structure, I am recommending that we fund one position in the ND Supreme Court.

This position would provide two key functions

- 1 ) Provide training and technical assistance to all court personnel on guardianship related issues including coordination of the new legal requirements that Mr. Schmidt recommended and are in the first bill draft you will consider today.
- 2) Monitor and investigate complaints against guardians regarding services provide.

Although there are relative few complaints against guardians, when they do happen they can be very serious as they impact the most vulnerable citizens in our state. There have been several serious situations that have required intervention and currently there is no mechanism for assessment and intervention in those situations. This position would coordinate those efforts.

Attached is a one page summary of the proposal with my preliminary budget estimates including current expenditures. I have attempted to keep the overall budget under 3 million dollars.

I need to publically thank all the various individuals/organizations that have helped develop this proposal and are seriously committed to protecting our vulnerable elderly and disabled. I sincerely hope that you will consider recommending development of a bill draft for consideration at the final meeting of the Human Service Interim Committee. If you have questions, please ask Ms. Hasbargen or others representatives in the room.

Thank you for your time and consideration.

## Appendix A

### Proposed outline of public guardianship system

#### Key Principles

- Integrate into existing structures
- Model after the DD system which is not included in the cost estimates
- Public guardianship funds only for low income persons (less than 125% of poverty) who are disabled/elderly and without family/friends to serve as guardians

#### Pre-guardianship services - the assessment, screening and planning for a guardianship

##### **Initiates the process** – any public/private entity or individual can initiate a guardianship

Adult protective services case managers to prepare if other entities not involved

Short term assessment of need, identify alternatives to guardianship and seek family or neighbors to provide the guardianship service if none available pursue public funding if individual meets the eligibility criteria

Estimated need would be 12 FTE state wide

Could be human service centers, county or private agency

**Total cost - \$1,647,002** (new \$1,239,413)

**Current biennium expenditures \$360,587**

Refer cases to DHS for eligibility determination/approval for petitioning cost and guardianship services

Secure and refer to attorney

##### **Filing petition** – based on Current Aging Service model

Private attorney to coordinate guardianship study visitor reports (\$2,500/case)

Filing costs/process

**Total Cost \$250,000** - (new approximately \$146,000)

**Current biennium expenditures \$104,000**

#### Direct Provision of Guardianship Services for low income individuals who are disabled/elderly

Contract funding for private agencies that provide guardianships at

\$11 day (first year) 11.50/day second year

July 1, 2013- December 31, 2013	25 slots (184 days)	\$ 50,600
January 1, 2014 – June 30, 2014	50 slots (181 days)	\$ 99,550
July 1, 2014 – December 14, 2014	75 slots (184 days )	\$158,700
January 1, 2015- June 30, 2015	100 slots (181 days)	\$208,150
<b>Total costs</b>		<b>\$517,000</b>

#### Monitoring of Guardianships

Court ombudsman to provide court training and addressing complaints) – 1 FTE

( Does not include comprehensive monitoring of all guardianships)

**Total Cost \$314,495**

**TOTAL COSTS \$2,728,497** (includes 464, 587 in existing funding)

New funds needed \$2,263,919



## STATE-WIDE ADULT PROTECTIVE SERVICES

**KEY TOPIC:** The documented need to expand and fund adult protective services throughout the state of North Dakota.

**PROBLEM:** Per N.D.C.C., the state is mandated to provide adult protective services to vulnerable adults. The eight Human Service Centers across the state handle this differently. In the Southeast Region, Adult Protective Services are contracted through Cass County Social Services. Historically, Cass County has financed the majority of these services. The ND Department of Human Services funds approximately 60% of one FTE and the region is currently being served by 3.25 FTEs. Regions I and II share a portion of one FTE who also has other responsibilities for the two regions. The remaining regions provide adult protective services coverage with a portion of only one FTE in each of the regions and those positions are generally combined with other responsibilities.

The need for Adult Protective Services is largely unknown to the general public. Unlike many other social conditions such as addiction, pervasive mental illness and delinquency that can cause significant distress to the general public, the abused are often hidden behind closed doors and concealed from public view. North Dakota has a burgeoning aging population, as well as escalating concerns in western North Dakota regarding financial exploitation. In a recent state-wide survey, 65% of counties reported an increase in adult protective referrals. The National Center on Elder Abuse estimates the frequency of elder abuse ranges from 2 - 10%, for the state of North Dakota that is potentially 11,734 to 58,672 people.

The need for adult protective services was also recently identified in the Guardianship Study completed by Winsor Schmitt, per the request of the Human Services Committee. According to his testimony to that committee on April 17, 2012...."The following concerns are expressed in North Dakota about adult protective services and guardianship: (a) there is no mandatory reporting of vulnerable adult abuse and neglect, (b) there is perception of less follow through or investigation of vulnerable adult abuse and neglect in some cases (that is, disagreement about the timing and urgency for intervention), and (c) inconsistent adult protection services statewide and lack of state funding to provide them."

**SOLUTION:** Provide sufficient funding and FTE positions to hire and retain capable staff for the provision of long-term adult protective services throughout North Dakota.

See case examples on reverse side



## **EXAMPLES:**

Peter, age 69, has lived on his farm in Southeast ND as a bachelor his entire life, living independently until recently when he suffered multiple strokes causing left-side weakness and severely impaired vision. His only family lives out of state. He fell several different times while checking cattle in his pasture, often lying for extended periods of time before he was found. Referral was made to APS, who worked to find him a guardian and worked with a neighbor to establish guardianship. The guardian now does daily checks and handles all of his finances, as well as his healthcare needs. He is still on his farm, which is where he wants to be.

Ann is an elderly female who lived alone in a very rural area in Southwest ND. She was unable to care for herself due to physical and cognitive limitations. There were chickens living in her home and her home was infested with mice. She did not have a water supply to her home. She was brought (by her nephew who is also disabled) to a local hotel to stay during a winter power outage. She was then admitted to the local hospital from the hotel. Hotel staff reported she had not bathed for a very long time. Her hair was crusted and black with dirt and required a toothbrush to be combed out. Due to lack of resources the woman was sent home with inadequate in home assistance or a surrogate decision maker in place to assist her with making arrangements that would make it safe for her to live at home. She continued to live in unsafe conditions with multiple hospitalizations for another year until her health was so compromised she had no choice but to enter a nursing home. A guardian was appointed at that time but it was too late for her to have any living options due to her long term neglected health and housing conditions. Her hospitalization and part of her nursing home costs were paid for with public funds.