

Testimony Prepared for the Senate Human Services Committee

RE: Senate Bill 2345 – Guardianship Monitoring / Guardianship Funding

January 30, 2023

Testimony of Scott Bernstein, Executive Director of Guardian and Protective Services, Bismarck

Chair Lee and members of the committee, thank you for this opportunity to present pertinent information regarding Senate Bill 2345. I am Scott Bernstein, Executive Director at Guardian and Protective Services here in Bismarck. As an agency, we provide public guardian services to many clients in the western half of North Dakota. Most of our clients are below the poverty line so our services are supported through the PASS funding.

The information I am presenting here is essentially the Cliff Note version of a more detailed look at the guardian crisis, the necessary funding and the implications of the various possible decision options.

However, let's take a quick look at the Cliff Note Summary of SB 2345.

SECTION 1: A NEW CHAPTER TO TITLE 27...This is regarding the formation of a task force on guardianship monitoring.

Essentially, the focus of the new section is to authorize a study that will determine appropriate ways to implement balanced accountability. Where protected persons and public money are involved there should be accountability. As an agency we want to provide our service with the highest degree of integrity. What that accountability should look like in practice needs to be studied and developed so it in fact can provide workable accountability. Workable for those providing the service and workable for those that will be in the position of managing the accountability. So we welcome this study. I think it is fair to say that you will find nearly universal agreement from Guardian Providers.

SECTION 2. APPROPRIATION - JUDICIAL BRANCH - FULL-TIME EQUIVALENT POSITION.

This is beyond my scope because I am not in the position to do hiring for the State. However, it appears logical that if you are going to implement monitoring guardianship it will require someone to administer that monitoring. However, will it take one FTE? We don't know.

SECTION 3. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - GUARDIANSHIP SERVICES.

This is where the rubber meets the road. It is also the focus of my longer submitted testimony. Quite simply, if the appropriation we are requesting isn't approved, SECTION 1 and SECTION 2 are of little or no practical value, meaning or relevance.

Why am I here today? I have come to speak for those who find it difficult to speak coherently for themselves. When the Court makes the difficult decision to remove the rights from an individual and suddenly that individual becomes a PROTECTED PERSON – you need a guardian. There is no other option. It's like you went swimming lost your suit and the tide went out. Suddenly, you're naked and vulnerable. You need someone to come to your rescue – a guardian. What if there are no family members, relatives or friends who want to assume this huge guardianship responsibility. Then PUBLIC GUARDIANS, are the only option to serve the PROTECTED PERSON. Every day, my team and I triage the requests that come in. The only right answer is "YES, WE WILL BE THE GUARDIAN. But we can't always say "yes"... sadly, we must say "no".

As Public Guardians we need just two things that will enable us to turn NO into YES!

1. As Public Guardians we need you to understand we have a passion to serve, to say "YES" and serve with integrity.
2. To turn NO into YES we need a boost in the PASS Funding that allows a reimbursement of \$20 a day.

Every day guardians are making decisions, some as simple as where to get eyes checked and others as significant as determining if this the time to discontinue treatment and transition a protected person into hospice. We make these decisions based on the best practices as outlined by the National Guardian Association. Guardianship has had some mud splattered on it this past year. It's criminal, embarrassing and for hardworking self-sacrificing guardians that are doing the right thing every day – absolutely disheartening. Guardians, on a good day wrestle with burnout. Clients are not always very appreciative...now imagine you can't hold your head up with a degree of dignity and claim you are a guardian. Many have silently worked hard for years with integrity. They need to know what they do matters.

And we need your support in raising the daily rate. We need to hire staff to meet the existing and growing need. I had a staff member this past week make this simple statement. "We can't continue working 60-70 hours a week. When will we be able to hire someone to help?"

The answer is simple. When we have money. We are a remarkable return on investment. That is in my detailed testimony. Dollars are saved in our healthcare system when the emergency room is no longer the walk-in clinic. Hospital beds are opened because a person is deemed safe for discharge. The comprehensive study of Guardianship in Florida clearly shows that money invested in guardians produces a multimillion dollar return on investment in both tangible and intangible ways. Details are in my comprehensive testimony.

The funding we receive will allow us to say "YES" more often because we can hire and expand our services.

This partnership is similar to the partnership the State has with the Alzheimer's Association. We partner with the State in fulfilling our role of restoring dignity to protected persons and strive to create a State that is safe, just and inclusive for all.

Thank you!

Guardianship SB 2345

Bill Introduced by Senators Hogan & Lee

Good morning Chair Lee and members of the committee. I am Scott Bernstein, the Executive Director of Guardian and Protective Services. We are located in Bismarck and considered to be the main provider of Public Guardian Services covering the western half of the State. As you might imagine, this requires driving many miles to meet with the clients we serve.

By way of reminder: Guardians are appointed by the Courts as provided for in the Century Code.

Presently, PASS (Public Administrators Support Services) provides a per diem rate of \$10.00 a day (max \$300 a month) to private individuals and agencies that serve as Public Guardians for indigent adults.

This money is reimbursed to an agency/private individual through the North Dakota Association of Counties. The NDACo does not receive any compensation for this service.

Since 2013, the legislature has appropriated General Funds in the OMB for distribution to private agencies and private individuals that serve as Public Guardians. (This does not include individuals served under the Developmental Disabilities (DD Waiver) as their guardians are contracted and funded through DHS and Catholic Charities North Dakota is the provider of these services.

- Current biennial funding supports a **\$10/day per protected person stipend** to persons and not-for-profit entities that are ordered by the State Court to serve these vulnerable individuals. The **caseload has grown from 314 to 443 over the first 18 months of this biennium. With an average net growth of 5 per month, the caseload is projected to reach 478 by the end of this biennium.** The current appropriate amount (\$2,450,000) will be insufficient to meet THIS biennium's need.

- **The Executive Budget for OMB recommends flat funding for 2021-25 resulting in:**
 - Caseloads being immediately frozen and reimbursed cases dropped by 5 per month until the total number of cases is under 400 **leaving 200+ incapacitated adults without guardian services.**
 - Present projections of 5 new wards per month for the upcoming biennium will increase the number of **cases by June of 2025 to 600.**

PASS funding request breakdown:

\$20 per day for 481 PASS clients plus 115 new slots at 5 new clients each month	\$7,754,400
21-23 biennium deficit	\$292,374
Total appropriation needed 7/1/23 to 6/30/25	\$8,046,774
Current appropriation	\$2,450,000
Total increase needed for PASS next biennium	\$5,596,774

Keep in mind...currently providers are running deficits. If it were not for Grants, Corporate Donations and individual donors. I would not be standing here talking to you today. All of these are unpredictable forms of revenue. The other day, we received a grant from the Otto Bremer Trust. I had applied for \$146,000 to help us increase our staffing to better serve rural North Dakota. We received \$65,000. We are immensely grateful for this grant and their commitment to North Dakota. This is the largest grant we have ever received from Bremer. It is also a rare grant because it can be applied toward operational expenses. Most grants are project specific and more and more of those 'projects' are following social trends focusing on issues of 'equity', 'the environment', etc. It is very challenging to match many grant specifications to court appointed guardianship.

REASONS FOR INCREASED NEED FOR GUARDIANSHIP

Dementia

Chemical Dependency

Physical Disability

Brain Injury

Mental Illness

Abuse/Exploitation

Public Guardianships are a critical support for our most vulnerable North Dakotans. A Guardian's ability to monitor and represent their protected persons not only benefits protected persons, but serves the hospitals, clinics and nursing homes where critical medical decision-making cannot take place for a protected person without a legally appointed guardians.

NORTH DAKOTA SNAP SHOT

At the end of 2022 there were 3,362 active guardianships of adults.

In September of 2022 there were 2,299 cases with non-professional guardians and 1,052 cases with professional guardians.

DECISION IMPLICATIONS

1. Leave the rate where it is.
 - Present agencies will close due to insufficient funds OR
 - Present agencies will need to drastically reduce the number of clients served by cutting existing staff.

2. Determine working with a public/private partnership is **not** in the State's best interest, defund PASS and establish a State run agency, with State employees as guardians and financial workers. Referred to in some States as the Office of Public Guardianship. The operational budget, per protected person would far exceed the \$20 per diem per protected person rate we are requesting. IT FAR EXCEEDS THE \$10 per diem we are presently paid through PASS.
 - a. The State would need to hire, with benefits, a minimum 40 FTE Case Managers to visit clients (the recommended ration is 1:20). The State would need to hire 35 FTE Financial Workers to process Medicaid, SNAP, Medicare, Insurance, EBTs, check processing, to name just a few items.
 - b. The Guardian services would have to cover the State because travel would be involved with the likelihood of acquiring State owned vehicles or paying mileage and lodging reimbursements.
 - c. Remote access would have to be set up for all these employees to work from home and maintain HIPPA compliance.
 - d. Computers and appropriate software, along with other office equipment would need to be purchased.
 - e. These are just the obvious items expenses.

3. The last rate increase recommended in 2013 was \$14.00 a day. If that amount had been approved the calculated rate of inflation over the last 10 years would put the per diem rate at over \$20.00 a day. However, the legislature approved \$10 a day.

4. Increase the per diem rate to \$20 a day. This will allow agencies to compete in the marketplace for competent staff, increase case-loads to manage projected growth, and expand services. This by no means covers the total expenses of an agency. All agencies will still be dependent upon unpredictable funding streams like grants, fund raisers and donors.

The State of Florida commissioned a study of guardianship and the findings were submitted in 2019. Florida utilizes a similar approach – contracting with 17 agencies cross the State. “These agencies served a total of 3,846 ‘wards’. Thoroughly documented tangible and intangible cost savings by all programs showed substantial cost savings to the state – more than 3 ½ time the amount allocated – or **\$29,039.986.24** for ONE year. If the agencies were provided with stable (full funding to cover their actual expenses) they would still produce a cost savings to the State of Florida of **\$14,311,954.93.”**

Guardians save the State of North Dakota and healthcare, housing and other public services, money every day!

PASS IS ONLY THE TIP OF THE GUARDIANSHIP ICE BERG

- North Dakota Long Term Care indicates there are 81 people in SNF’s in need of guardians.
- Department of corrections reports there are older ‘inmates’ people who have been eligible for parole two years or longer but they cannot be paroled until there is a guardian in place.
- Hospitalized patients that have been deemed unsafe for discharge have been hospitalized for as long as NINE months for no medical reason because there was no guardian available.
- The Alzheimer’s Association statistics on the increase of all forms of dementia has increased the need for guardians. The projected number of North Dakotans with Alzheimer’s by 2025 is 16,000. If only 5% need a guardian Guardianship will be required to serve 800 more people in two years. We are now seeing ‘care-givers’ who need guardians because they are no longer cognitively competent to make good decisions regarding care.
- Homeless shelters are housing people who need or are waiting for guardians.
- Guardian agencies have waitlists and meet weekly with other agencies to determine how and who will take the most desperate cases.
- Judge Feland, working under directions from the State Supreme Court, formed a Guardianship Working Group. Part of the objective was to solve the guardian shortage because Courts are ordering guardianship with

no available guardians. Judge Feland was looking at a State funded Guardianship Commission that would try and manage placement of cases.

- Agency Guardians are managing at many at 40 – 50 protected persons while the National Guardian Association recommends a 1:20 ratio. Because North Dakota is rural many guardians are driving 100 to 300 miles round trip to visit a protected person.

Guardians are a remarkable example of how a small expenditure in a public/private collaboration can reap a huge return on investment. Not only are dollars saved, offsetting the investment, but the quality of life in communities across the State reaps a huge reward.