



North Dakota Legislative Council

Prepared for the Government Finance Committee
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STATE GUARDIANSHIP PROGRAMS STUDY - BACKGROUND MEMORANDUM

Section 65 of Senate Bill No. 2015 (2023) requires the Legislative Management to study the state's guardianship programs. The study must include consideration of the existing structure for the programs under the Office of Management and Budget (OMB), judicial branch, and Department of Health and Human Services (DHHS); the feasibility of consolidating the programs under one agency; and an appropriate level of funding for the programs. The Legislative Management assigned the study to the Government Finance Committee.

GUARDIANSHIPS

Guardians may be appointed by testamentary or a court order to make specific decisions for individuals who lack the capacity to make or communicate decisions necessary to manage personal affairs. Guardianships include general guardians who are responsible for decisions in all aspects of the individual's life, limited guardians who have the authority to make decisions only in specific areas of the individual's life, such as financial or residential decisions, and testamentary guardians who are identified in a written will, commonly to care for a minor upon the death of both parents. Guardians may be individuals or private agencies that provide guardianship services. The conduct of guardians is subject to regulation by a court.

North Dakota Century Code Chapters 27-27, 30.1-26, 30.1-27, 30.1-28, and 30.1-29 contain provisions related to guardianships. Chapter 27-27 requires the judicial branch to establish a task force on guardianship monitoring; Chapter 30.1-26 has general provisions that pertain to guardianships, including definitions and jurisdiction; Chapter 30.1-27 provides for the guardianship of minors; Chapter 30.1-28 relates to guardianships of incapacitated individuals; and Chapter 30.1-29 provides a system of protective proceedings designed to allow the management of estates by a court-appointed conservator. Chapter 11-21 relates to public administrators, which may serve as guardians. Section 50-06-24 allows DHHS to create a unified system for guardianship services.

State guardianship programs are administered by OMB, the judicial branch, and DHHS. The Office of Management and Budget distributes grants to private agencies and individuals for public guardianships of individuals who are not served by the developmental disabilities program under DHHS. The judicial branch administers a guardianship monitoring program to train and monitor all guardians and provides funding for guardian ad litem. The Department of Health and Human Services administers a guardianship establishment program to assist qualified adults, provides adult protective services to investigate reports of neglect and abuse, and distributes grant funding for public guardianships of individuals with developmental disabilities.

The schedule below provides information on the funding appropriated by the Legislative Assembly for state guardianship programs for the 2023-25 biennium.

Description	General Fund
Office of Management and Budget The agency provides guardianship grants to private agencies and individuals who serve as public guardians for vulnerable adults.	\$7,100,000
Judicial Branch The guardianship monitoring program trains and monitors all guardians, including financial reviews and wellbeing checks. Guardian ad litem are used in child abuse and neglect cases and are appointed by the court.	624,008 1,410,000
Department of Health and Human Services The Aging Services Division administers the guardianship establishment program which provides assistance to qualified individuals aged 18 or older.	423,000
The Developmental Disabilities (DD) Services Division contracts directly with Catholic Charities to provide guardianship services to individuals who are receiving DD program management.	4,348,452
Total funding	\$13,905,460

PREVIOUS LEGISLATIVE STUDIES

2003-04 Interim

Pursuant to Senate Concurrent Resolution No. 4008 (2003), the interim Criminal Justice Committee studied the need for guardianship services; standards and practices for guardians; and funding for programs for individuals with mental illness, vulnerable elderly adults, and individuals with traumatic brain injuries. The committee received testimony and information from individuals and agencies involved in the area of guardianships and from the North Dakota Guardianship Task Force, which includes representatives of the Department of Human Services, the North Dakota Long Term Care Association, the State Bar Association of North Dakota, the Protection and Advocacy Project, the State Hospital, and other guardianship service provider organizations. The committee recommended the following bills which were approved by the Legislative Assembly:

- Senate Bill No. 2028 (2005) authorized the Department of Human Services to contract with an entity to 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 was to include a base unit funding level, provider standards, staff competency requirements, and guidelines and training for guardians. The bill appropriated \$40,000 from the general fund to the department for contracting to establish and maintain a guardianship services system.
- Senate Bill No. 2029 (2005) established a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian.
- Senate Bill No. 2030 (2005) provided for an annual report requirement for guardians and conservators and required the State Court Administrator's office to develop a form to fulfill reporting requirements.

2011-13 Interim

The interim Human Services Committee studied guardianship services for vulnerable adults pursuant to Section 1 of House Bill No. 1199 (2011). The Legislative Management contracted with Mr. Winsor C. Schmidt, J.D., LL.M., University of the Louisville School of Medicine, Louisville, Kentucky to assist with the study. Major recommendations from Mr. Schmidt included:

- Enacting statutory framework to require education and certification of guardians along with continuing education to ensure guardians meet core competencies.
- Require mandatory reporting of vulnerable adult abuse or neglect.
- Provide public guardian services for all eligible incapacitated individuals not just individuals with a particular diagnosis.
- Establish a system for active monitoring of guardianship annual reports.
- Consider changing the state's delivery of guardianship services by creating an independent state agency modeled after the North Dakota Commission on Legal Counsel for Indigents to provide public guardianship services.

The committee considered but did not recommend a bill draft to implement the suggestions of the North Dakota Association of Counties to provide centralized guardianship services. The bill draft would have:

- Required the Department of Human Services to provide centralized guardianship services for vulnerable adults who are ineligible for developmental disabilities case management services. Centralized guardianship services include supervision of guardians, training and assistance, financial assistance to reduce the cost of guardianship services for individuals determined to lack adequate resources, and payment to public administrators. The department could have established an advisory board to assist with the development of guardianship standards and reporting requirements.
- Amended Section 11-21-08 to provide that public administrators receive compensation for services from the Department of Human Services' centralized guardianship services program.
- Repealed Section 50-06-24 relating to a unified system for guardianship services.
- Provided a \$1.2 million general fund appropriation to the Department of Human Services for the centralized guardianship services program for the 2013-15 biennium.

The committee considered but did not recommend a bill draft to implement the suggestions of Representative Hogan relating to guardianship services program enhancements. The bill draft would have provided:

- A general fund appropriation of \$1,286,415 to the Department of Human Services for providing adult protective services, including the assessment of the needs of vulnerable individuals, identification of alternatives to guardianship, and the compilation and dissemination of information regarding family and local guardianship resources for the 2013-15 biennium. The department would have been authorized 12 FTE positions for the initiative.
- A general fund appropriation of \$146,000 to the Department of Human Services for providing for legal costs associated with the establishment of guardianships for low-income individuals with serious mental illness, with a disability, or who are elderly for the 2013-15 biennium.
- A general fund appropriation of \$517,000 to the Department of Human Services for contracting with private entities to provide guardianship services for the 2013-15 biennium.
- A general fund appropriation of \$314,495 to the Supreme Court for providing comprehensive training and technical assistance to court personnel on guardianship-related issues and monitoring and investigating complaints against guardians for the 2013-15 biennium. The Supreme Court would have been authorized 1 FTE position for the initiative.

The committee recommended House Bill No. 1040 (2013), which was approved by the Legislative Assembly, to:

- Amend Section 30.1-28-09 requiring a notice prior to guardianship proceedings with information on the individual's rights and a description of the nature, purpose, and consequences of an appointment of a guardian.
- Create a new section for appointing emergency guardians.
- Repeal Section 30.1-28-10 relating to temporary guardians.

The committee also recommended House Bill No. 1041 (2013), which was amended and approved by the Legislative Assembly, to:

- Appropriate \$828,600 from the general fund to OMB for grants to counties for public and private guardianship services. As recommended by the committee, the bill provided \$1,657,100 from the general fund to OMB for the grants.
- Appropriate \$70,000 from the general fund to the Supreme Court for developing and delivering basic guardianship training for guardians and public administrators.

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Receive information from OMB, the judicial branch, and DHHS regarding the existing structure of the state's guardianship services, the number of guardianships, historical and recent trends in the number of guardianships, and a comparison of the funding provided for the programs and the actual expenses.
2. Receive comments from OMB, the judicial branch, and DHHS regarding the feasibility and desirability of consolidating the programs under one agency.
3. Receive comments from private agencies and individuals that provide guardianship services regarding their perspective of the existing structure of the state's guardianship services and the amount of funding needed for guardianship services.
4. Receive comments from other interested persons regarding the study.
5. Develop recommendations and any bill drafts necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Management.