

STUDY OF GUARDIANSHIP SERVICES - FINAL REPORT RECOMMENDATIONS

This memorandum provides a summary of recommendations included in the final report for the study of guardianship services completed by Mr. Winsor C. Schmidt, faculty member, University of Louisville School of Medicine. The recommendations are categorized by those relating to general guardianship provisions and those relating to delivery of guardianship services and include final report page references.

RECOMMENDATIONS RELATING TO GENERAL GUARDIANSHIP PROVISIONS

- Enact provisions to require education and certification of guardians (page 12).
- Adopt codes of ethics and standards of practice for guardians (page 12).
- Change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect (pages 14 and 28).
- Provide the right to counsel to the proposed ward (pages 14 and 33).
- Adopt provisions relating to emergency guardians regarding required petition details, notice, the right to a hearing, the right to counsel, presence of the proposed ward at the hearing, limited duration, and the standard of proof (pages 14 and 51).
- Adopt a prohibition against the public guardian petitioning for appointment of itself (page 26).
- Adopt notice provisions regarding rights at the hearing and the nature, purpose, and consequences of appointment of a guardian (page 30).
- Adopt a right to trial by jury in guardianship proceedings (page 34).
- Change the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence" (page 36).
- Grant the alleged incapacitated person the right to secure an independent medical or psychological examination relevant to the issues involved in the hearing at the expense of the state if the person is unable to afford such examination and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing (page 39).
- Enact guardianship qualification requirements, such as requiring fingerprint, criminal history, and credit background checks before appointment as a guardian (page 43).

RECOMMENDATIONS RELATING TO DELIVERY OF GUARDIANSHIP SERVICES

- Adopt an explicit statutory scheme for public guardianship (page 23). Implicit schemes name an agency or employee as guardian of last resort when there are no willing and responsible family members or friends to serve, whereas explicit schemes provide for an office and the ability to hire staff and contract for services.
- Provide for public guardian services for all eligible incapacitated persons similarly, and not public guardian services for only particular diagnoses or categories (page 24).
- Specify one public guardian agency to serve as public guardian (page 44).
- Make the office of public guardian independent from all service providers (page 45).
- Limit each guardian's caseload to a size that allows the guardian to support and protect the ward, visit the ward monthly, and regularly contact all service providers (page 48).
- Provide additional duties and powers for the office of public guardian, such as employing staff as necessary; adopting policies and procedures for administration; and acting as a resource for guardianship education, information, and support (page 48).
- Establish a system for monitoring guardianship annual reports, including filing and review of annual reports and plans (page 50).
- Change the state's delivery model for guardianship services from the hybrid of the social service agency model and the county model to a model based on the strengths and weaknesses of each model and the particular needs of North Dakota (pages 21 and 56). The recommended prioritization of models for North Dakota is:
 1. Independent state office model - Establish a new state agency modeled after the North Dakota Commission on Legal Counsel for Indigents to provide public guardianship services.
 2. County model - 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 - Establish an independent office of public guardian within each of North Dakota's counties.
4. Judicial model - Establish an office of public guardianship within the administrative office of the court. The judiciary is one of the appropriate locations for housing the office of public guardianship because a legal guardian is an agency of the court, appointed by the court, and accountable to the court.