

**Interim Human Services Committee
January 7, 2014**

**Testimony of Sally Holewa
State Court Administrator**

Good afternoon Chairman Damschen and members of the Human Services Committee. For the record, my name is Sally Holewa. I am the North Dakota State Court Administrator. I am appearing today at the request of the committee to present information on guardianships.

Let me start by giving some brief information about guardianships for those of you that may be less familiar with what a guardian is and what it entails, and how that is the same or different from a conservator or a public administrator.

A **guardian** is someone who has been appointed by a court to make decisions for another person about such things as where the person will live, the medical care they will receive, what services they will receive and other personal choices.

A **conservator** is someone who has been appointed by a court to make financial decisions for another person. As the name implies, their primary fiduciary duty is to protect and conserve the estate of the person. They would be involved in such things as paying bills, filing taxes, managing investments and managing both personal property and real estate holdings.

A **public administrator** is an individual or entity who has been appointed by the presiding judge of the district under NDCC 11-21-05(8), who may serve as the guardian of last resort if there is no other person who can be found who is willing and able to serve as a guardian to an incapacitated person. This is just one of the duties assigned to public administrators under North Dakota statute. This is not a separate type of case, but a subset of the general guardianship or conservatorship case type.

To make matters somewhat more confusing, these three types of legal actions can be combined. In most cases, the guardian is also given conservatorship powers, but there are instances where a conservator is appointed instead of a guardian or a conservator may be appointed separately from the guardian for a

variety of reasons. Under any of these scenarios, the guardian or conservator who is appointed may also be the public administrator.

A court action is required for every guardianship, conservatorship and public administrator appointment because all of these actions require a legal determination that a person is incapacitated. For your information, I have attached a diagram of the guardianship process.

In North Dakota, we average 25 new guardianship or conservatorship cases filed every month. From 2008 through 2013, there were 1,805 new adult guardianship or conservatorship cases filed. Because guardianship and conservatorship cases are usually active for several years, it is helpful to consider how many cases are active during a given year. I have included that information in the chart below:

Guardianship and Conservatorship Cases 2008 – 2013 (Adult only)		
Year	New Filings	Total Actives Cases
2008	285	1,627
2009	325	1,592
2010	323	2,361
2011	275	2,707
2012	271	2,870
2013	326	3,225

Public Administrator funding: During the last session, the legislature appropriated \$828,600 to address the issue of inadequate funding for public administrators when they are acting as guardians. Under the legislation, to access the state appropriated funds for public guardianship cases, the counties are to provide a 50% match for cases that existed prior to July 31, 2013, with the match funding capped at one-tenth of one mill. This dollar amount was based on the premise of funding 164 existing cases plus an additional 43 new cases per year, using a payment amount of \$225/month per case for FY 2013-14 and \$250/month per case for FY 2014-15. The number of 164 existing cases was arrived at through a telephone survey done by the Guardianship Association of North Dakota (GAND) in the fall of 2012. That estimate proved to be short by approximately 25

cases. There is also some concern about the limitation of 43 new cases per year because it works out to less than one new case per county. But those are issues we will deal with as the need arises. My primary message today is that the rollout of funds has gone smoothly. The funding approved by the state brings some much-needed stability to the public administrator system and will allow these private entities to continue serving the needs of the community.

The Association of Counties is acting as the financial agent for the collection of county funds and the distribution of funds to the public administrators. The Association established the Public Administrator Support Services Program, known as PASS, to enroll cases and track expenditures. They were able to work very quickly and began enrolling cases in August. As of the end of the year, 46 counties have opted to join the program by signing a Joint Powers Agreement with the Association of Counties and there are 200 cases enrolled in the PASS program. Ward County is the only county that has declared its intent to opt out of the program and they are continuing to fund the public administrator position at the county's expense. I have attached a copy of the PASS program guidelines and a map of the participating counties. I believe someone from the Association of Counties is here today and would be available to answer any questions you may have about that program.

Other issues related to Public Administrator: There are two other issues specific to public administrators that I want to bring to your attention. The first is the confusion caused by the name and the location of the statute relating to these particular duties. Since public administrators have other duties beyond serving as a guardian or conservator, it would be helpful if that part of the duties were pulled out of NDCC 11-21 and included with the other statutes related to guardians and conservators found in NDCC 30.1-28. It would also be helpful if they were called "public guardian" or something similar to distinguish that role from the others they serve in, especially because the funding sources for the roles are different.

The other issue is the current statutory references to "a public administrator" and "**the** public administrator" which would imply that there can only be a single public administrator appointed to work in a county. By way of some background, public administrators were elected county officials until 1984 when they became appointed offices, with the appointment being made by the county judge (rather

than the county commission as other county appointments are made). In 1991, the reference to county judge was changed to district court judge in response to the unification of the county and district court systems in North Dakota. The concern with restricting the appointment to a single public administrator is that it has a direct impact on the size of the caseload some public administrators are carrying. Keep in mind that the numbers I have given you regarding the size of the PASS caseload reflect only those public administrator appointments where the ward is eligible for Medicaid or whose income is at or below 100% of the poverty level. Most public administrators are also carrying a caseload that includes private pay guardianships and public administrator appointments where the person does not meet the PASS guidelines.

General issues related to guardianship/conservatorship cases: There are currently two state groups looking at guardianship issues. The Department of Human Services has a quarterly Touchpoint Meeting where stakeholders can work out any sticking points in the referral or reimbursement process. The Court also has established the Guardianship Standards Workgroup to examine the new guardianship standards promulgated by the National Guardianship Association and the new probate court standards promulgated by the National College of Probate Judges. Some of the issues the group has identified for further discussion include:

- Training for family guardians
- Certification of professional guardians
- Requiring background checks
- Establishing training and a statewide rosters for court visitors and guardians ad litem
- Simplifying the process for interested persons to report concerns about a guardian
- Simplifying the process for a guardian to ask to have duties modified or to be relieved of duties altogether
- Effective monitoring of annual accounts

I would be happy to expand on any of those areas if anyone has any questions about them.

CHAPTER 11-21 PUBLIC ADMINISTRATOR

11-21-01. Public administrator - Appointment - Term of office.

The presiding judge of the judicial district in which a county is located may, after consultation with the judges of the judicial district, appoint a public administrator for that county. A public administrator may be a corporation or limited liability company. The initial appointments under this section may be made upon completion of the terms of public administrators elected in 1984. The public administrator shall hold office for four years and until a successor is appointed and qualified. The presiding judge may appoint a single public administrator to serve more than one county within the district court's jurisdiction.

11-21-02. Bond of public administrator - Conditions.

The bond of the public administrator shall run to the state of North Dakota for the benefit of any party who may be damaged by a breach of the conditions thereof. Whether the bond is issued by the state bonding fund or by a surety company, it shall guarantee that the public administrator will:

1. Faithfully discharge all the duties of the office.
2. Account annually to the judge of the district court for all estates and property under the public administrator's official control and care, or whenever required so to do by the judge.
3. Turn over to the successor in office all property and estates in the public administrator's official care and control, and truly account for the same.
4. Turn over all property and estates in the public administrator's official care and control to any other administrator, executor, or guardian designated by the judge of the district court, and truly account for the same.
5. Perform such other acts and duties properly relating to the office as may be ordered by the district judge.

The bond shall be approved and endorsed as provided for administrators and executors.

11-21-03. Bond of public administrator may be increased - Annual statement.

The judge of the district court shall require the public administrator to make a statement annually, under oath, of the amount of property in the administrator's hands or under the administrator's control as administrator, for the purpose of ascertaining the amount of bond necessary to secure such property. The court, from time to time and as occasion may require, may demand additional security from the administrator, and if the same is not furnished within twenty days after such demand, may remove the public administrator and appoint another.

11-21-04. Filing of bond and oath.

The public administrator shall file the administrator's oath and bond with the judge of the district court. The bond and oath must be recorded at length in the record books of the court.

11-21-05. Duties and powers of public administrator.

The public administrator shall be ex officio public special administrator, guardian, and conservator in and for the county and shall take into the administrator's charge, without application to any appropriate court or special appointment, the estates of all deceased persons, and the persons and estates of all minors, and the estates or persons and estates of all incapacitated persons, in the following cases:

1. When a person dies intestate in the county without relatives or known heirs.
2. When a person dies testate and the executor named in the will is absent or fails to qualify and there is no heir, legatee, or devisee available to act as personal representative.
3. When an unknown person dies or is found dead in the county.
4. When money, property, papers, or other estate is left in a situation exposed to loss or damage, and no other person administers the estate.

5. When any estate of any person who dies intestate in the county or elsewhere is left in the county and is liable to be injured, wasted, or lost, and the intestate does not leave a known spouse or heirs in this state.
6. When a minor is under the age of fourteen years, the minor's parents are dead, and the minor has no guardian or conservator.
7. When any estate is left in the county belonging to a minor whose parents are dead, or whose parents, if living, refuse or neglect to qualify as guardian or conservator, or who, having qualified, have been removed as guardians or conservators, or from any cause are incompetent to act as guardians or conservators, when such minor has no one authorized by law to take care of and manage the minor's estate.
8. When the estate or person and estate of an incapacitated person shall be left in the county and there is no legal guardian or conservator for such incapacitated person and no competent person who will qualify to take charge of such estate or to act as guardian or conservator known to the court having jurisdiction.
9. When for any other good cause, the court shall order the administrator to take possession of an estate to prevent its being injured, wasted, stolen, or lost.

11-21-06. May act as general and special administrator, guardian, and conservator.

The public administrator shall have the same powers as are conferred upon special administrators, guardians, and conservators, and shall be subject to the same duties, penalties, provisions, and proceedings as are enjoined upon or authorized against special administrators, guardians, and conservators by the laws of this state so far as the same may be applicable. The public administrator may be appointed in proper cases as general administrator without giving additional bond, except that the court may require additional security, and when so appointed, the public administrator shall continue the administration until it is finally settled unless the public administrator resigns, dies, is discharged in the ordinary course of law as the administrator, or is removed for cause as public administrator or as administrator of such estate.

11-21-07. Public administrator to prosecute necessary suits.

The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of any deceased person or of any minor or incapacitated person when such estate or person is in the administrator's charge or custody.

11-21-08. Compensation of public administrator.

The public administrator shall receive the same compensation for services as is allowed by law to executors, administrators, guardians, and conservators unless the court, for special reasons, allows a higher compensation.

11-21-09. Public administrator not to charge attorney's fees - Penalty.

A public administrator shall not charge a fee as an attorney in the administration of the estates of decedents of which the public administrator shall be the administrator. Any person who shall violate this section is guilty of an infraction.

11-21-10. Public administrator to act as receiver in assignment for the benefit of creditors.

When a person makes an assignment for the benefit of creditors, the public administrator, either on the administrator's own petition or on the petition of a creditor of the assignor, shall be appointed receiver and shall administer the assignment in the place of the assignee named therein.

11-21-11. Civil officers to inform public administrator as to property.

All civil officers shall inform the public administrator of all property and estate known to them which is liable to loss, waste, or injury and which, by law, ought to be in the hands of the public administrator.

11-21-12. Giving notice on taking charge of estate - Penalty for failure.

The public administrator, immediately upon taking charge of any estate except one over which the administrator has taken charge under the order of the district court for the purpose of administering the same, shall file in the office of the district court a notice that the administrator has taken charge of the estate. If a public administrator fails to file the notice, the administrator shall forfeit and pay to the persons entitled to the estate a sum not exceeding two hundred dollars and the court may remove the public administrator from office. The forfeiture shall be recovered before the district court on motion and after reasonable notice of the motion has been given to the public administrator.

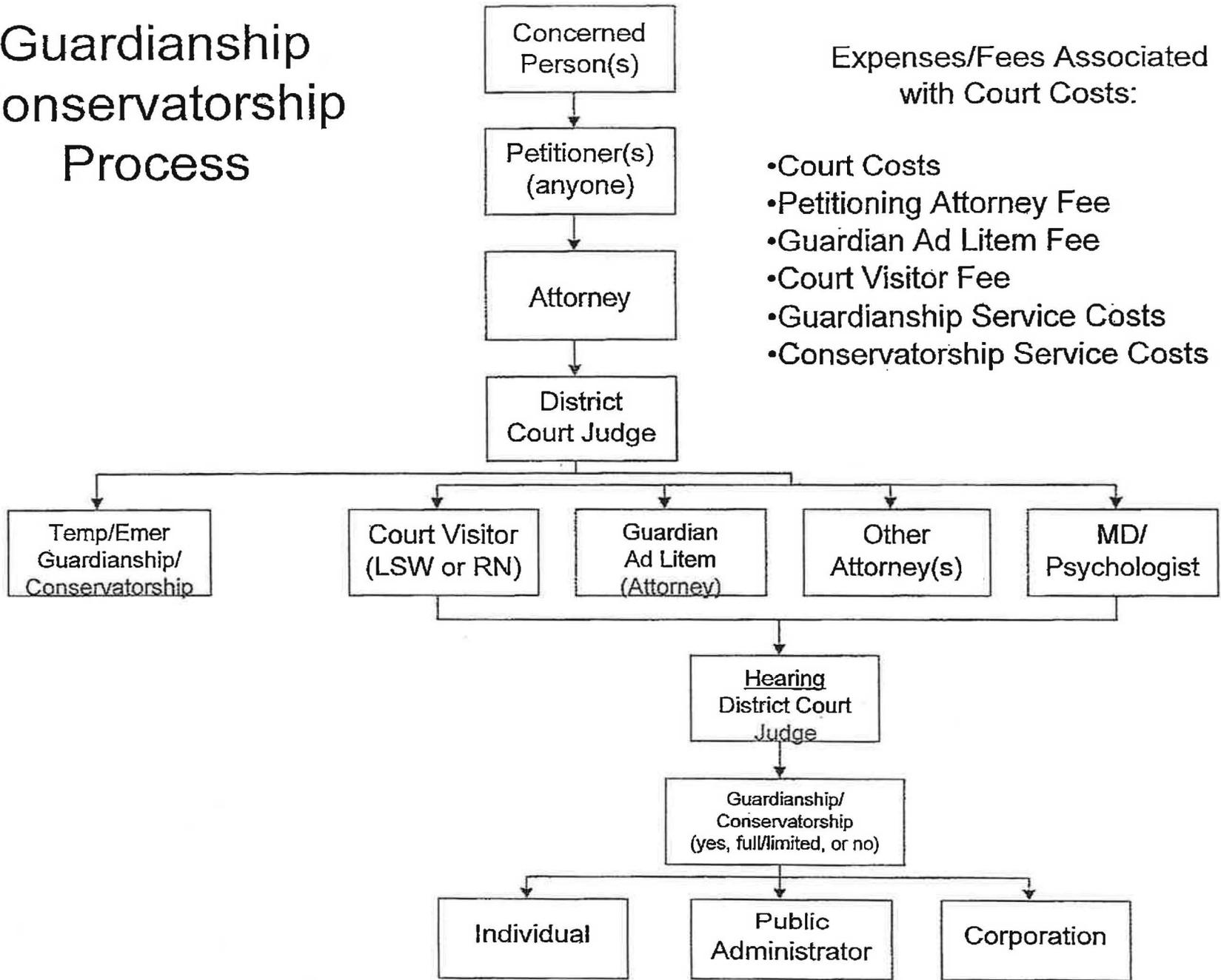
11-21-13. Court may order public administrator to account to successors.

The district court, at any time and for good cause shown, may order the public administrator to account for and deliver all money, property, or papers belonging to an estate in the administrator's hands, to the administrator's successor in office, to the heirs of the estate, or to any personal representative or conservator regularly appointed as provided by law.

11-21-14. Removal from office.

The public administrator may be removed from office in the same manner and for the same reasons as other public officers may be removed except that for the reasons specified in sections 11-21-03 and 11-21-12 a public administrator may be removed summarily upon the motion of the judge of the district court.

Guardianship Conservatorship Process



Expenses/Fees Associated with Court Costs:

- Court Costs
- Petitioning Attorney Fee
- Guardian Ad Litem Fee
- Court Visitor Fee
- Guardianship Service Costs
- Conservatorship Service Costs

North Dakota Public Administrator Support Services (PASS)

Program Guidelines

Individuals/Organizations – Program Eligibility

An individual or a private organization is eligible for this program if it has been designated by the district court to serve as Public Guardian within any county of the State. The North Dakota Supreme Court, pursuant to House Bill 1041 as enacted by the 63rd Legislative Assembly, is to develop and deliver guardianship training for public and private guardians. To remain eligible for this program a Public Guardian must fulfill these training requirements when available.

Application and Reimbursement for Guardianship Services

An agency or individual is eligible to receive funding support from this program for public guardianships in-place between July 1, 2013 and June 30, 2015 pursuant to House Bill 1041 as enacted by the 63rd Legislative Assembly and these guidelines or until such funding is expended. Consistent with the state appropriation, funding for public guardianships established prior to July 1, 2013 may be limited to the actual number, or 164 eligible cases, whichever is less.

A Public Guardian eligible to receive funding support from this program may apply for such support for a specific ward by meeting the following criteria:

1. The applicant, , certifies that it has been designated the public guardian; that the ward is not receiving developmentally disabled services and that the individual has been found to be an incapacitated adult as defined by NDCC 30.1-26-01 and has income at or below 100% of the federal poverty level or is approved for Medicaid funded services.
2. The applicant certifies that it is receiving no other financial reimbursement from other sources for serving as the individual's public guardian after the date of application for program reimbursement.
3. The applicant certifies that it will prepare and submit all court required reports concerning the public guardianship.
4. The applicant completes and certifies to an initial online application for reimbursement which includes the docket number of the court order establishing the guardianship and other relevant information regarding the ward's eligibility for PASS program reimbursement.
5. The applicant certifies that it will update the online application prior to completion of the next monthly report if the ward becomes ineligible for PASS program reimbursement by entering the date of ineligibility and the reason. A ward may be reactivated for PASS program reimbursement if they subsequently become eligible for PASS program reimbursement.
6. The applicant agrees to complete an monthly online report indicating the number of days of service provided to each ward that is eligible for PASS program reimbursement. Data will not be accepted for days of service prior to the date of guardianship establishment, or July 1, 2013 whichever is later, and may not include more than five (5) additional days after the death of a ward.

7. The applicant certifies that it will provide the PASS program manager, the state funding agency or their designee access, during regular business hours, to all records necessary to establish eligibility of this ward for program reimbursement and to complete any necessary fiscal audit.
8. The applicant understands that failure to comply with the provisions of this application may result in discontinuation of current and potential future funding. The applicant also certifies all submissions are accurate and made in good faith and that any fraudulently obtained funds or misuse thereof may result in civil and criminal penalties.

Payment for Services

The PASS program manager shall promptly pay each public administrator that has elected to participate in this program for the number of service days meeting the above criteria, within the limits of the funding authorized by House Bill 1041, as enacted by the 63rd Legislative Assembly. The reimbursement amount shall be based on the monthly reports entered into the PASS automated data system and will be calculated at the appropriate monthly and daily rates indicated below, as established by Legislative intent:

1. For public guardianship services provided between July 1, 2013 and June 30, 2014
 - a. \$225.00/month for a full month
 - b. \$7.50/day for a partial month
2. For public guardianship services provided between July 1, 2014 and June 30, 2015
 - a. \$250.00/month for a full month
 - b. \$8.33/day for a partial month

Disclaimer

This program is designed to provide limited funding support for the services provided by guardians serving as public administrators for indigent individuals. The program has no role or responsibility for the monitoring or oversight of guardians which are controlled and governed by state law and court order. Any concerns or complaints regarding a guardianship will be referred to the court establishing that guardianship.

Program Management & Oversight

A joint powers entity has been established by the various county governments to collect the local matching funds for the support of the PASS program. The North Dakota Association of Counties has been designated by the joint powers agreement to serve as its administrator and has also agreed to serve as PASS Program Manager for the development and implementation the necessary administrative processes to distribute both the state and local matching funds.

The North Dakota Association of Counties shall periodically convene a Guardianship Advisory Committee to include the State Court Administrator, a representative of the Office of Management and Budget, the Executive Director of the Department of Human Services and a member of Guardianship Association of North Dakota (GAND) to approve the proposed operating procedures, to address emerging issues and to monitor program funding.

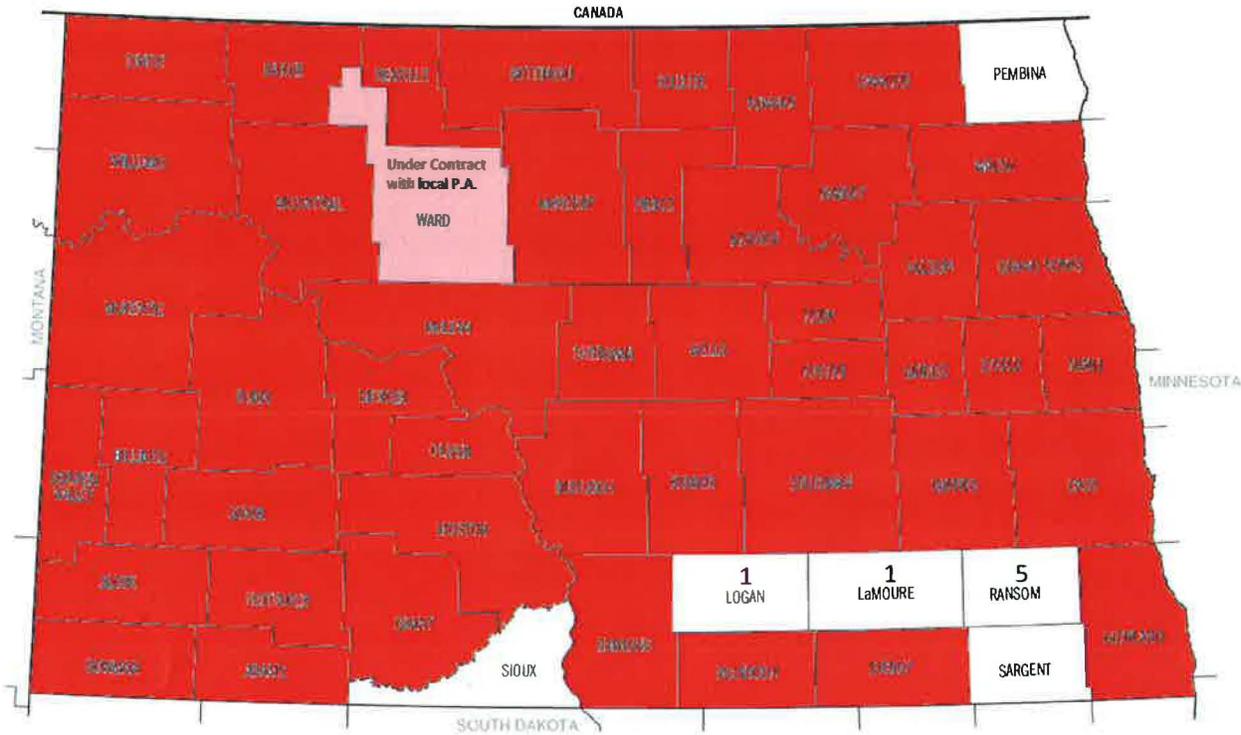
PASS Active Cases as of December 19, 2013

County	DKK Guardians hip	Guardian & Protective Services, Inc.	Guardian, Fiduciary, & Advocacy Services	Opportunity Foundation Inc.	Steve Forde	Tracie Retterath	Total
Barnes	4						4
Benson						1	1
Billings		1					1
Burleigh	3	12					15
Cass	10		9				19
Eddy	1						1
Foster	2						2
Golden Valley		1					1
Grand Forks	23		2				25
Grant		1					1
Kidder	1						1
McIntosh	2						2
McLean	2	2					4
Morton	4	1					5
Nelson	2				2		4
Ramsey	1					13	14
Stark	1	3					4
Stutsman	82	2	2	1			87
Wells	1						1
Williams				8			8
Total	139	23	13	9	2	14	200

Eligibility	DKK Guardians hip	Guardian & Protective Services, Inc.	Guardian, Fiduciary, & Advocacy Services	Opportunity Foundation Inc.	Steve Forde	Tracie Retterath	Total
Medicaid Only	16	8	6	4	1	2	37
<100% Only	22	1				2	25
Both	101	14	7	5	1	10	138
Grand Total	139	23	13	9	2	14	200

Age	Female	Male	Total
19	2	0	2
20-29	6	9	15
30-39	3	8	11
40-49	6	15	21
50-59	18	30	48
60-69	15	25	40
70-79	19	18	37
80-89	14	3	17
90-99	7	1	8
100	1	0	1
Total	91	109	200

PASS JPA STATUS



As of January 1, 2014

JPA Signed and Returned 2 Known wards in counties not yet participating