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10/23/03
Date

2003 SENATE HUMAN SERVICES

SCR 4008

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. ^{SCR} SB 4008

Senate Human Services Committee

Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1	X		2583 - end

Committee Clerk Signature *Donna Kramer*

Minutes:

SENATOR JUDY LEE opened the public hearing for SB 4008 directing the Legislative Council to study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals, and individuals with traumatic brain injuries.

SENATOR TOM FISCHER, from District 6 in Fargo, introduced the bill and asked for favorable consideration. Asking for a Legislative Council guardianship study. Standards and practices need to be put in place. (Meter #2583 - 2729)

SENATOR TIM MATHERN, of Fargo, testified as a sponsor of the bill. Guardianship is a legal process wherein the court provides for a person to make decisions for another person's welfare.

Expressed view that guardianship is needed. (Meter # 2788 - 3015)

DONNA BYZEWSKI, President of GAND, testified in favor of the bill. (Written testimony)

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Senate Human Services Committee
Bill/Resolution Number ~~SB~~ 4008 *SL*
Hearing Date February 10, 2003

GAND is a non-profit organization of professionals, families and concerned individuals committed to supporting guardians and other surrogate decision makers in enhancing the lives of the people they serve. (Meter # 3200 - 3560)

WILLIAM CHAUSSEE, administrator of Guardian and Protective Services, Inc., testified in favor of the bill. Stated guardians are appointed when there are none. Mentioned living wills. Asked about people with no family or friends ... "Partners Program" volunteer program. No standards have been set up. (Written testimony) (Meter # 3694 - 5068)

SANDI TABOR, Deputy Attorney General, testified. Their office has been in discussion with representatives from the Guardian Association and other concerned individuals. The attorney general will do everything in his effort to encourage the Legislative Council to prioritize this study and we will also actively participate in the study. We have had discussions with the State Bar Association and with the Supreme Court about them forming a joint study committee themselves. (Meter #5093 - 5219)

RODGER WETZEL, Director of the Eldercare Program at St. Alexius, testified and urged a do pass. (Written testimony) (Meter # 5255 - 5774)

BRUCE MURRY, employee of the North Dakota Protection and Advocacy Project, testified in support of the bill. (Written testimony) (Meter # 5843 - 5926)

AL STENEHJEM, Ex. Director of Mental Health Association, testified in behalf of the bill. (Meter # 5967 - 6000)

SENATOR LEE closed the public hearing for SB 4008. (Meter # 6060)

SENATOR FISCHER moved a DO PASS motion.

SENATOR FAIRFIELD seconded the motion.

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Page 3
Senate Human Services Committee
Bill/Resolution Number SB 4008 *SLR*
Hearing Date February 10, 2003

Roll call was read. 6 yeas 0 nays.

SENATOR FAIRFIELD will be the carrier. (Meter # 6085 - end)

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Date: 02-10-03
Roll Call Vote #: (1)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4008

Senate Legislat Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Fisher Seconded By Sen. Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. Fairfield

If the vote is on an amendment, briefly indicate intent:

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Deanna Hill Operator's Signature 10/23/03 Date

REPORT OF STANDING COMMITTEE (410)
February 11, 2003 8:16 a.m.

Module No: SR-26-2205
Carrier: Fairfield
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SCR 4008: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4008 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-26-2205

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2003 HOUSE HUMAN SERVICES

SCR 4008

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4008

House Human Services Committee

Conference Committee

Hearing Date March 25, 2003

Tape Number	Side A	Side B	Meter #
1	x		2.9 - 21.0
Committee Clerk Signature <i>Sharon Lygrow</i>			

Minutes:

Sen. Fischer appeared as sponsor to introduce this resolution recommending Legislative Council to study Guardianship services and standards and practices along with elderly individuals and individuals with traumatic brain injuries.

Donna Byzewski, President of the Guardianship Association of North Dakota (GAND) appeared in support with written testimony.

Rep. Kreidt: Are we experiencing a lot of problems with guardians?

Answer: There were a number of problems in Cass County and in Devils Lake we had exploitation of some individuals.

Rep. Wieland asked for the background of GAND and if they were all volunteer.

Rep. Potter: What kinds of things do you look for?

Answer: Standards of Practice, Understanding ND Law, reporting, what your responsibilities are, like writing, money management, ethical and was patterned after ND Guardianship Law.

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Date

Page 2
House Human Services Committee
Bill/Resolution Number SCR 4008
Hearing Date March 25, 2003

Rep. Kreidt: Regarding family members, are you looking at penalties for misrepresentation?

Answer: Some of the things they might be looking at are 2 different types of Standards for family guardians and for people who are in corporate guardianship. I don't know if we would be looking at penalties but it could be something that brought up to the guardianship law that all guardians must go through 2 hours of training.

Mel Webster, Attorney in Bismarck appeared in support with written testimony stating abuse usually happens before a guardianship is established. There is absolutely no auditing of any guardianship or conservatorship reports. We really need to look at different standards for professional guardians and family guardians. One problem for family guardians is there is no source of information for them.

Rep. Amerman: How much power does a guardian have?

Answer: A full guardianship with full legal authority, than I don't believe the ward would have the capacity to make a new will and the guardian does not have the authority to make a will for that individual. When the Ward dies, than ND's Probate statute takes over and if the Ward has no will, his or her property passes according to our probate statute, which usually is family.

Jim Jacobson, Deputy Director of the ND Protection and Advocacy Project (P & A) appeared in support with written testimony.

Sen. Mathern appeared in support and asked for the committee's support.

No opposition. Closed the hearing.

Rep. Kreidt made a motion for DO PASS and place on the Consent Calendar, second by Rep. Wieland.

VOTE: 11 - 0 - 2

Rep. Wieland will carry the bill.

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Date: March ²⁵, 2003
 Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SCR 4008

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass & Place on Consent

Motion Made By Rep Kreidt Seconded By Rep Wieland

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz <i>A</i>			Rep. Carol Niemeier <i>A</i>		
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep Wieland

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REPORT OF STANDING COMMITTEE (410)
March 25, 2003 10:43 a.m.

Module No: HR-53-5641
Carrier: Wieland
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4008: Human Services Committee (Rep. Price, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SCR 4008 was placed on the Tenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-53-5641

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10/23/03
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2003 TESTIMONY

SCR 4008

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10/23/03
Date

SCR 4008

Testimony in support of SCR 4008 - February 10, 2003

Rodger Wetzel, Eldercare Program Director, St. Alexius Medical Center

Madam Chair and members of the committee:

My name is Rodger Wetzel. I am the Director of the Eldercare Program at St. Alexius. I have been in this position for 17 years. Prior to this position, I was the Assistant Director of the Aging Services Division of the NDDHS.

In the past 30 years I have been directly involved in over 300 guardianships. Most often I have served as the "court visitor", the person who completes the psychosocial assessment for the judge and client prior to the guardianship hearing.

In North Dakota we do not have a system, and often not even the services, if many of our most vulnerable people need a guardianship.

I believe the issues that need to be studied include: the petitioning process, petitioning attorney, guardian ad litem, court visitor, costs of hearing, available guardians, training of guardians, guardianship standards, guardianship reports, guardianship reimbursement, and other issues.

The most vulnerable populations are "mentally incapacitated" individuals who are elderly, are chronically mentally ill, or who have experienced a traumatic brain injury. The DD population often are served by the state and contracted guardians.

Let me give you an example: An elderly lady is living in her own apartment. She now has mild to moderate Alzheimer's disease, and this has progressed to the point where she is not mentally able to taking care of herself, or her home. Her home is becoming a risk to the health and safety of herself and other building residents. She is not able to managing her own finances, and has a very limited income. But she still believes she is doing just fine, which is typical of people with dementias. It is possible that with a guardian authorized to make sure she legally applies for and receives essential services, she could function at a lesser costly level of care for a period of time. Often the guardianship is the missing link along the continuum of home and community-based services.

Because she has very limited finances, she does not have the resources, and there may be no other resources, to pay for the costs of a guardianship process. Even if there were resources available, if she has no family member or friend willing to step forward to serve as her guardian, there may be no interested guardians available. If she had a nephew willing to step forward and serve as her guardian, that nephew may not fully understand his responsibilities as a guardian, which could include managing her finances, legal affairs, living arrangements, medical care, nursing home placement, mental health service needs, and other areas.

Another example of a person who often falls between the cracks is a chronically mentally ill or brain-injured who has limited resources and no interested family members. Sometimes these individuals have exhausted any willing family support because of their long-term serious mental illness or behavior problems, and may need an outside party to make sure they legally apply for and get essential services, which may help keep them out of institutional settings.

I urge you to give a "do pass" to SCR 4008, so that the issues related to essential guardianships may be studied during the upcoming biennium.

I would be happy to answer any questions.

Rodger Wetzel
Operator's Signature

10/23/03
Date

Senate Human Services Committee
Testimony of William Chaussee, Administrator
Guardian and Protective Services, Inc.
in Support of Senate Concurrent Resolution No. 4008
February 10, 2003

Madame Chair and Members of the Committee:

My name is William Chaussee, administrator of Guardian and Protective Services, Inc. I am also a past president of the Guardianship Association of North Dakota and a board member of the National Guardianship Association. I appear before you in support of Senate Concurrent Resolution No. 4008.

Guardian and Protective Services, Inc. (GaPS), a non profit corporation, has offices in Bismarck and Fargo. Our agency provides protective arrangements to vulnerable adults who are unable to secure services through family members, agencies, or other interested parties. These protective arrangements include powers of attorney for health care and/or finances, representative payee, and when necessary, guardianship. The people we serve are elderly, severely mentally ill and traumatic brain injured with complex problems, making it difficult to find family or volunteers to serve. Often, our appointments are due to self neglect or financial exploitation.

GaPS receives referrals from families, concerned neighbors and friends, human service centers, home care agencies, county social services, hospitals, senior centers, banks, attorneys, and courts. In 2002 GaPS provided services to 364 individuals in the Bismarck and Fargo areas.

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Guardian and Protective Services, Inc.
Senate Concurrent Resolution No. 4008
Page 2

Funding for our Program is received from cases with the ability to pay, grants, donations, limited county funds, and United Way. The number of "low income" individuals that we are assisting far exceed those with ability to pay. While, sixty-five percent of our funds are received from "paid cases", almost sixty-five percent of people we serve are determined to be "low income".

Establishing funding sources for guardianship and alternatives to guardianship is a major concern. Recently, due to increases in referrals and expenses we have curtailed referrals that do not have the ability to pay for our services. In addition, we are exhausting our grant resources.

Guardian and Protective Services, Inc. is a member of the National Guardianship Association and adheres to the "NGA Standards of Practice". All GaPS professional staff is required to be Registered Guardians with that Association.

This resolution provides for a study of standards and practices for guardians and funding for guardian programs. We request your support of SCR No.4008.

William Chaussee
William Chaussee, Administrator

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TESTIMONY
NORTH DAKOTA PROTECTION AND ADVOCACY PROJECT
SENATE CONCURRENT RESOLUTION 4008
FEBRUARY 10, 2003
SENATE HUMAN SERVICES
SENATOR JUDY LEE CHAIRMAN

Chairman Lee and members of the Senate Human Services Committee, my name is Bruce Murry and I am an employee of the North Dakota Protection and Advocacy Project (P&A). P&A supports SCR 4008.

The stated need for increased guardianship services for people with mental illnesses and traumatic brain injury is consistent with the experience of P&A's regional Disability Advocates. It appears that current corporate and public guardianship services are overwhelmed. Current funding mechanisms address mostly people with Developmental Disabilities, and cannot meet all of their needs. Funding for existing services appears marginal, and guardians must choose to absorb additional costs or recover them from wards with very limited means.

Long waiting lists, difficulty contacting guardians, and limited services are common. In some cases guardians cannot offer wards the quality of service they would wish.

Although immediate increased funding would have more of a positive impact, P&A understands the dire budget situation of the state. The study should increase understanding of how to provide services in future economic downturns.

Thank you for this opportunity and I am available for any questions.

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**TESTIMONY OF MELVIN L. WEBSTER
IN SUPPORT OF SCR 4008
BEFORE THE NORTH DAKOTA HOUSE OF REPRESENTATIVES
HUMAN SERVICES COMMITTEE
MARCH 25, 2003**

Madame Chairman, my name is Melvin Webster. I am an attorney in private practice in Bismarck, North Dakota. A substantial part of my practice involves protective arrangements, including guardianships/conservatorships. I urge your support of SCR 4008.

Guardianship is a vital component of adult protective services. At present, there is no state guardian of last resort. If there are no family members to serve, or if for one reason or another family members are not appropriate, sometime there is no one to serve. While some fortunate counties, such as Burleigh County and Morton County, and most of the large cities have public administrators that are appointed by the district court, there a number of rural counties in which there is no public administrator. Consequently, if there are no family members available to serve, a guardian cannot be appointed.

Additionally, there are issues regarding standards for corporate and professional guardians and issues regarding training for family guardians.

Therefore, I urge your support of SCR 4008.

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**House Human Services Committee
Testimony on Senate Concurrent Resolution No. 4008
Provided by: Donna Byzewski
Representative Clara Sue Price - Chairperson
March 25, 2003**

Chairperson Price and Members of the Human Services Committee, my name is Donna Byzewski and I am President of the Guardianship Association of North Dakota (G.A.N.D.). I am testifying in support of Senate Concurrent Resolution No. 4008.

G.A.N.D. is a non-profit organization of professionals, families and concerned individuals committed to supporting guardians and other surrogate decision makers in enhancing the lives of the people they serve. It is a priority of our organization to encourage the development of appropriate legislation designed to improve services to persons in need of guardianship. Based on the weekly and at times daily phone calls that I receive from professionals or family members across North Dakota, there is a gap in the guardianship services available to people with mental illness, vulnerable elderly individuals and individuals with traumatic brain injuries. These calls revolve around people who are experiencing life threatening situations, medical emergencies, abuse or neglect issues, psychiatric difficulties, financial exploitation and the need for appropriate housing/residential services. These are very vulnerable people with diminished capacity who are at tremendous risk because they do not have the safety net of a guardian.

Senate Concurrent Resolution No. 4008 could be the catalyst to bring together guardians; professionals from the Attorney General's office, Aging Services Division, Mental Health and Substance Abuse Services and State Hospital; attorneys; adult protection professionals; outreach workers; and family members. This diverse group could take an in-depth look at the

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Donna Byzewski
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10/23/03
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guardianship needs of people with mental illness, vulnerable elderly individuals and people with traumatic brain injuries. The end result of this collaborative effort would a much more accurate picture of the guardianship needs in North Dakota from which a comprehensive guardianship service system could be developed.

Senate Concurrent Resolution No. 4008 also addresses the necessity for standards of practice for guardians. It is a priority of G.A.N.D. to establish, promote and maintain high ethics and standards for professional and family member guardians. As a guardian, I have a fiduciary responsibility on behalf of my ward. I have agreed to undertake the special obligations of a guardian and I have the duty to act in my ward's best interest. Unfortunately, there have been incidents in which a guardian has betrayed this position of trust either due to lack of awareness of his/her responsibilities or willful mismanagement of the care of the ward or the ward's estate. Substandard guardianship practices are no longer acceptable - the risk of harm to the most vulnerable people is too high. Establishing standards of practice is a critical component of Senate Concurrent Resolution No.4008.

On behalf of G.A.N.D., I am asking for your support of Senate Concurrent Resolution No. 4008. Thank you for giving me this opportunity to talk with you about the guardianship needs of the people of North Dakota and I welcome any questions that you may have.

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TESTIMONY
NORTH DAKOTA PROTECTION AND ADVOCACY PROJECT
SENATE CONCURRENT RESOLUTION 4008
March 25, 2003
HOUSE HUMAN SERVICES
REPRESENTATIVE CLARA SUE PRICE, CHAIRMAN

Chairman Price and members of the House Human Services Committee, my name is Jim Jacobson and I am the Deputy Director of the North Dakota Protection and Advocacy Project (P&A). P&A provides advocacy and protective services to people with disabilities. P&A supports SCR 4008.

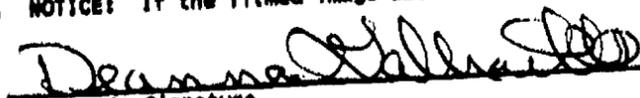
The stated need for increased guardianship services for people with mental illnesses and traumatic brain injury is consistent with the experience of P&A's regional Disability Advocates. Current corporate and public guardianship services are overwhelmed. Current funding mechanisms focus primarily on meeting the needs of people with Developmental Disabilities and cannot meet all of their needs. Funding for existing services appears marginal, and guardians must choose to absorb additional costs or recover them from wards with very limited means.

Waiting lists, difficulty contacting guardians, and limited services are common. In some cases guardians cannot offer wards the quality of service they would wish.

Although immediate increased funding would have more of a positive impact, P&A understands the dire budget situation of the state. The study should define the scope of services required to meet the needs of vulnerable individuals with disabilities. It should also provide an understanding of how to provide services in future economic downturns.

Thank you for this opportunity and I am available for any questions.

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