

2023 SENATE HUMAN SERVICES

SB 2035

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2035
1/4/2023

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| A BILL for an Act to provide appropriations to the office of management and budget and the department of health and human services for guardianship services. |
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2:22 PM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston** are present. **Senator Hogan** was absent.

Discussion Topics:

- Guardianship needs
- Disability needs
- Funding request
- Staff request

2:23 PM **Terry O. Traynor, ND Association of Counties**, introduction SB 2035 testimony in favor. #12333

2:35 PM **Donna Byzewski, Program Director of the Guardianship Division, Intellectual Disabilities with Catholic Charities North Dakota** testimony in favor. #12306

2:42 PM **Audrey Urick, Social Worker Guardian Angels Program of ND**, testimony in favor oral

2:54 PM **Scott Bernstein, Executive Director, Guardian and Protection Service (GAPS)** testimony oral in favor

Other written testimony:

Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association #12300
Kristin Vetter, Sanford Health Bismarck, Director for Case Management #12325

2:55 PM **Madam Chair Lee** closed the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2035
1/30/2023

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| A BILL for an Act to provide appropriations to the office of management and budget and the department of health and human services for guardianship services. |
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3:02 PM Madam **Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Senator Hogan** were present.

Discussion Topics:

- Committee action

Senator Lee calls for motion.

Senator K. Roers makes motion **DO NOT PASS**.

Senator Cleary seconded.

Roll call vote.

| Senators | Vote |
|--------------------------|-------------|
| Senator Judy Lee | Y |
| Senator Sean Cleary | Y |
| Senator David A. Clemens | Y |
| Senator Kathy Hogan | Y |
| Senator Kristin Roers | Y |
| Senator Kent Weston | Y |

Motion Passes.

6-0-0

Senator Lee carries SB 2035

3:04 PM **Madam Chair Lee** closed the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2035: Human Services Committee (Sen. Lee, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2035 was placed on the Eleventh order on the calendar. This bill affects workforce development.

TESTIMONY

SB 2035



2023 SENATE BILL 2035

Senate Human Services Committee

Senator Judy Lee, Chairman

January 4, 2023

Chairman Lee and members of the Senate Human Services Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association (NDHA). I provide this testimony in support of Senate Bill 2035. We ask that you give this bill a **Do Pass** recommendation.

Hospitals support the funding of grants for indigent guardianship services and efforts to increase the reimbursement rate and number of corporate guardianships.

When a hospitalized patient is unable to make health care decisions for himself and he does not have anyone qualified to make decisions for him, the patient can unfortunately be left stranded in a hospital bed long after discharge should have happened. In a perfect world, the process of securing guardianship services for a vulnerable individual should only take a few days to a week. Currently, however, the process takes an average of 30-90 days. In some cases, it is much longer.

These situations present many challenges for the patient and the hospital. When the patient is ready for discharge, but is waiting for guardianship services, the bed is not available for another patient who needs it. While the patient remains in limbo, there is no one to instruct the hospital in care decisions. Hospitals cannot employ or choose guardians directly because the guardian could be viewed as lacking the necessary independence to make decisions, as required by law. They

must rely on the patient's family and friends or, if none are willing or able to serve, a corporate guardian, to initiate the process and serve.

By better funding indigent guardianship services and corporate guardianship services, SB 2035 addresses these barriers and takes the right step toward more efficiently connecting vulnerable patients to the services they need.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association

Senate Human Services Committee

Testimony on Senate Bill 2035

Senator Judy Lee – Chairman

January 4th, 2023

Chairman Lee and members of the Senate Human Services Committee, my name is Donna Byzewski and I am the Program Director of the corporate guardianship program for individuals with intellectual disabilities at Catholic Charities North Dakota. I am respectfully asking your committee to support SB 2035 to provide appropriations to the Office of Management and Budget and the Department of Health and Human Services for guardianship services.

For more than 35 years, the Developmental Disabilities (DD) Division has contracted with Catholic Charities ND to provide guardianship services on behalf of adults with intellectual disabilities. Since 1987, we have served as guardian for more than 1,000 individuals with intellectual disabilities. It is important to note that many adults with intellectual disabilities are their own decision maker. However, there are critical times when a person may need the services of a guardian, and if no one else is available or appropriate, a corporate guardianship is a necessity. Corporate guardianship is the guardian of last resort. Our contract with the DD Division specifies that Catholic Charities ND can only accept referrals from Developmental Disabilities Program Managers from the regional human service centers in North Dakota. Most referrals tend to fall into one of three categories: the person is at risk of harm or experiencing a medical crisis and has no family or friends to serve as guardian; families are not wanting to be guardian because the needs of their son, daughter, brother or sister have burned them out and are more than they can manage; or family may be the ones exploiting the person financially or abusing the individual physically or sexually. We have a waiting list of 107 people at this time.

On any particular day, a guardianship worker may be assisting an individual on their caseload in finding housing after they have been evicted for the 4th time in a year for allowing strangers to stay at their apartment; helping a person work through a diagnosis of a serious or life threatening diagnosis which carries the responsibility of being the decision maker for these difficult medical decisions; spending countless hours working with credit card companies after a person has racked up huge credit card bills; accessing and maximizing the benefits that an individual

receives – hours are spent on completing applications for housing, Social Security, food stamps, etc.; finding and accessing psychiatric services when a person is experiencing mental health struggles (more than 74% of the individuals on our caseload receive the services of a psychiatrist); monitoring and reporting any incidents of suspected abuse, neglect and/or exploitation; assisting an individual in obtaining restraining orders against abusive boyfriends or girlfriends or sexual predators. We are available 24 hours per day/365 days per year for emergency through our emergency on-call system.

We are currently serving as guardian for 502 individuals who live throughout the state of North Dakota. We have 15 guardianship workers who carry an average caseload of 34 people. Our guardianship workers must have a four year degree and be either a licensed social worker or a Qualified Developmental Disabilities Professional (QDDP). They often travel 50 to 140 miles one way to visit each person on their caseload, attend team meetings, court hearings and attend medical appointments. Our guardianship workers' duties and responsibilities typically include the following: determining the individual's living arrangements; assuring that the person's medical needs are met and providing consent for all medical procedures, surgeries, treatments, medications, end of life decisions, etc.; arranging and authorizing educational and vocational opportunities; legal decision making; and making financial decisions as well as overseeing the individual's assets and social security benefits. Through the provision of guardianship services, we are able to intervene as necessary to ensure that the basic needs of individuals are met, that they have an appropriate place to live, that they have access to ongoing medical care and that they are receiving necessary support services.

We are currently funded to serve 499 individuals at a daily rate of \$8.56 per person. We are significantly underfunded and we are deficit spending by thousands of dollars each month. This is not sustainable.

- From 7/1/21 to 6/30/22, corporate guardianship had a deficit of -\$63,882
- From 7/1/22 to 11/30/22, corporate guardianship has a deficit of -\$49,697
- Current daily rate of services for 499 individuals is \$8.56
- Needed daily rate to cover the actual cost of services (before a cost of living increase) is \$10.30 per day

- Daily rate with 5% cost of living increase for the first year of the biennium would be \$10.82; daily rate with a 5% cost of living increase for the 2nd year would be \$11.36
- Requesting funding for 30 additional slots to reduce our waiting list of 107 people
- Requesting additional funding for petitioning costs for the 30 new cases - \$75,000 (currently funded for \$125,195 – this would bring the total to \$200,195).

| | |
|--|------------------|
| Current appropriation for corporate guardianships services for 499 people with intellectual disabilities | \$3,239,704 |
| Funding for corporate guardianship in Governor’s budget | \$3,679,797 |
| Total funding needed for 529 people with intellectual disabilities (includes 30 new slots; \$200,195 petitioning costs – includes additional \$75,00 for petitioning costs for 30 new slots; daily rate of \$10.82 for 1 st year; daily rate of \$11.36 for 2 nd year) | \$4,488,544 |
| Difference between Governor’s budget request for Corporate Guardianship and the true needs of Corporate Guardianship | \$808,747 |

We are respectfully asking your committee to increase the appropriation in SB 2035 for corporate guardianship services to \$808,747 (this is an \$808,747 increase from the amount allocated in the Governor’s budget).

Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

Senate Human Services
Sen. Judy Lee, Chair
Jan. 4, 2023
SB 2035

Chairperson Lee and members of the committee. My name is Kristin Vetter and I am the Sanford Health Bismarck Director for Case Management. Thank you for the opportunity to share comments with you on this important topic and to encourage a yes vote on SB 2035.

In my role I oversee our patient discharge process, ensuring that our patients are sent home safely or transferred to another level of care needed by the patient. We work closely with the patient and their family members to ensure smooth transitions of care.

When a patient who is unable to make decisions for themselves and does not have anyone qualified to make decisions for them, that patient unfortunately is left stranded in a hospital bed long after they are ready to move on. In a perfect world, the process of assigning a vulnerable individual the guardianship services they need would take a few days to a week. Currently, the process takes several weeks at best and sometimes much longer.

Certainly there are many factors that contribute to discharge delays, but establishing guardianship services for patients seemingly guarantees a patient will remain in a hospital bed much longer than medically necessary.

These situations present many challenges for the patient and the hospital. When the patient is ready for discharge, but awaiting guardianship services, the bed is not available for another patient with acute medical needs. While the patient remains in limbo, there is no one to instruct the hospital in care decisions.

As an example, an adult male admitted this year required a short hospitalization but ended up staying 79 days waiting for guardianship services and, ultimately, placement into a memory care facility. This stay occurred at a time when hospital beds were frequently full. With an average 4.2-day inpatient length of stay, that hospital bed could have provided care for 18 patients while this gentleman was stuck through no fault of his own. The delayed transfer is not good patient care and it's not good for the patients who were denied a hospital admission at Sanford because that bed was filled for more than 10 weeks with an individual that did not have medical necessity.

There is no blame to be placed, only the recognition that we need to do better for these patients. Establishing guardianship is a complex challenge, complicated further by financial shortfalls. The additional funding for guardianships included in SB 2035 is a step in the right direction.

Thank you for your time and your consideration.

Kristin Vetter
Case Management Director
Sanford Health Bismarck
Kristin.Vetter@SanfordHealth.org
701-323-7402

Testimony Prepared for the
Senate Appropriations Committee
 January 4, 2023
 By Terry Traynor
 North Dakota Association of Counties



RE: Senate Bill 2035 – OMB Budget/Public Guardianship Funding

Thank you, for the opportunity to communicate our Association's support for enhanced public guardianship funding, and to urge your consideration and approval of a total appropriation level much higher to fully fund the actual guardianship need.

Since 2013, the legislature has appropriated General Funds in the OMB budget for distribution to the private agencies and private individuals that serve as Public Guardians for indigent adults. (This does not include individuals served under the Developmental Disabilities program as their guardians are contracted and funded through DHS).

These wards are individuals that the District Court has determined are incapacitated and cannot adequately look after their own affairs due to age/dementia, physical disability, mental illness, addiction, etc. An advisory group (Courts, OMB, DHS, 1 Provider, & NDACo) directs the reimbursement of public guardians for (non-DD) wards whose resources total less than 100% of poverty and/or are receiving Medicaid-funded services.

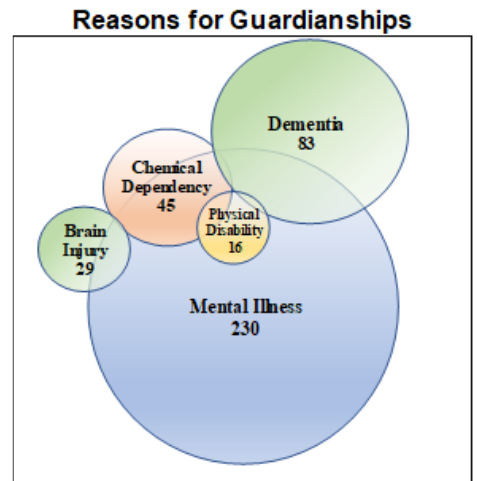
As the North Dakota's population of elderly and disabled individuals has grown, the number of those that lack resources has grown as well. This has steadily increased the need for public guardians.

- The current biennial funding supports a **\$10/day per ward stipend** to the persons and charitable entities that are ordered by the State Court to serve these vulnerable individuals. Their collective **caseload has grown from 314 to 443 over the first 18 months of this biennium**. Each month we see the termination of 2-3 cases and the addition of 7-8 cases statewide. With an average monthly net growth of 5, the **caseload is projected to reach 478 by the end of this biennium**, and we anticipate the current appropriation amount (\$2,450,000) will be insufficient to meet THIS biennium's need.
- The **Legislature's consultant, in 2012, recommended** a daily rate for professional guardians of **\$14/day**. Due to funding constraints and rapid caseload growth the appropriation has **limited rates to \$10/day**. It is requested that the 2023-25 appropriation reflect a significant rate increase.
- **The Executive Budget** for OMB, however, **recommends flat funding for 2021-25**, requiring that caseloads be immediately frozen, and the reimbursed cases dropped by 5 per month until the total was back down under 400 – **leaving a projected 200+ incapacitated adults without guardian support**. We expect the State Court will continue to seek guardians for a net increase of 5 wards per month for the upcoming biennium, **reaching close to 600 cases by June 2025**. To support this caseload and provide a rate increase, the appropriation will need to grow.

Public guardianships are a critical support for our most vulnerable citizens. Their ability to monitor and represent their wards not only benefits the wards, but serves the hospitals, clinics and nursing homes where critical medical decision-making cannot take place for an incapacitated person without a legally appointed guardian. Thank you, for your consideration of this request.

FUNDING OF PUBLIC GUARDIANSHIPS - BACKGROUND

In response to a previous interim study of guardianship issues by the Legislature’s consultant, Dr. Winsor Schmidt, the 2013 Legislature began a process of reforming the Public Administrator “system.” The haphazard and unequally funded public guardianships throughout the State were set on a course for greater uniformity, better training, and limited, but consistent, funding. This initiative was supported by a broad cross-section of medical and social service entities, recognizing the personal and financial impact caused by the existing system’s deficits.



| November 2022 Caseload | |
|--------------------------------|----|
| Guardian & Protective Services | 73 |
| DKK, Inc. | 74 |
| Opportunity Inc. | 18 |
| Catholic Charities | 71 |
| Veronica Miller | 5 |
| LSS of MN | 90 |
| Guardian Angels | 88 |
| Lighthouse | 13 |
| Family Advocacy Services | 11 |

The legislature provided financial support to guardians serving indigent individuals that are not served separately by the developmentally disabilities system for guardianships. As the bubble chart indicates, many of those served are incapacitated due to several issues. Currently, seven agencies and one individual provide public guardianship services supported by this funding.

2021-23 Biennium

5 cases/month growth - No Stipend Change

| | | Cases | \$ Expended |
|------|------------------------|-------|------------------|
| 2021 | July: | 314 | 94,200 |
| | August: | 321 | 96,270 |
| | September: | 320 | 95,900 |
| | October: | 321 | 96,280 |
| | November: | 324 | 97,340 |
| | December: | 330 | 99,090 |
| | January: | 328 | 98,440 |
| | February: | 334 | 100,220 |
| | March: | 342 | 102,510 |
| | April: | 340 | 102,080 |
| | May: | 374 | 112,240 |
| 2022 | June: | 392 | 117,550 |
| | July: | 429 | 128,580 |
| | August: | 431 | 129,350 |
| | September: | 436 | 130,850 |
| | October: | 437 | 131,070 |
| | November: | 443 | 132,910 |
| | December: | 448 | 134,410 |
| | January: | 453 | 135,910 |
| | February: | 458 | 137,410 |
| | March: | 463 | 138,910 |
| | April: | 468 | 140,410 |
| | May: | 473 | 141,910 |
| 2023 | June: | 478 | 143,410 |
| | Estimated Funding Need | | 2,837,250 |
| | 2019-21 Carry-In | | 103,336 |
| | 2021-23 Approp | | 2,450,000 |
| | Projected Deficit | | (283,914) |

2023-24 Biennium

5 cases/month growth - Various Stipend Levels

| | | Cases | \$10/day | \$14/day | \$20/day |
|------|------------------------|-------|------------------|------------------|------------------|
| 2023 | July: | 481 | 144,300 | 202,020 | 288,600 |
| | August: | 486 | 145,800 | 204,120 | 291,600 |
| | September: | 491 | 147,300 | 206,220 | 294,600 |
| | October: | 496 | 148,800 | 208,320 | 297,600 |
| | November: | 501 | 150,300 | 210,420 | 300,600 |
| | December: | 506 | 151,800 | 212,520 | 303,600 |
| | January: | 511 | 153,300 | 214,620 | 306,600 |
| | February: | 516 | 154,800 | 216,720 | 309,600 |
| | March: | 521 | 156,300 | 218,820 | 312,600 |
| | April: | 526 | 157,800 | 220,920 | 315,600 |
| | May: | 531 | 159,300 | 223,020 | 318,600 |
| 2024 | June: | 536 | 160,800 | 225,120 | 321,600 |
| | July: | 541 | 162,300 | 227,220 | 324,600 |
| | August: | 546 | 163,800 | 229,320 | 327,600 |
| | September: | 551 | 165,300 | 231,420 | 330,600 |
| | October: | 556 | 166,800 | 233,520 | 333,600 |
| | November: | 561 | 168,300 | 235,620 | 336,600 |
| | December: | 566 | 169,800 | 237,720 | 339,600 |
| | January: | 571 | 171,300 | 239,820 | 342,600 |
| | February: | 576 | 172,800 | 241,920 | 345,600 |
| | March: | 581 | 174,300 | 244,020 | 348,600 |
| | April: | 586 | 175,800 | 246,120 | 351,600 |
| | May: | 591 | 177,300 | 248,220 | 354,600 |
| 2025 | June: | 596 | 178,800 | 250,320 | 357,600 |
| | 23-25 Biennium Total | | 3,877,200 | 5,428,080 | 7,754,400 |
| | 21-23 Biennium Deficit | | (283,914) | (283,914) | (283,914) |
| | Total Approp. Needed | | 3,593,286 | 5,144,166 | 7,470,486 |