

010202



Minnesota Department of **Human Services**

**RECEIVED**

MAR 20 2001

LEGISLATIVE REFERENCE LIBRARY  
STATE OFFICE BUILDING  
ST. PAUL, MN 55155

**COMMUNITY  
SUPPORTS  
FOR  
MINNESOTANS  
WITH  
DISABILITIES  
DIVISION**

***Creating  
Service Options  
and Choice  
in  
Homes and  
Communities***

**TRANSFERRING  
PUBLIC GUARDIANSHIP  
AUTHORITY  
AND  
RESPONSIBILITIES**

***Recommendations  
to the Minnesota Legislature***

**December 2000**

**This information is available in other forms to people with disabilities by calling:**

**(651) 297-4112**

**Or contact us through the Minnesota Relay Service at:**

**1 (800) 627-3529 (TTY)**

**1 (877) 627-3848 (speech-to-speech relay service)**

#### **COST TO PREPARE REPORT**

Minnesota Statutes, chapter 3.197, requires disclosure of the cost to prepare reports. The cost of this report was approximately \$21,800.

# **TRANSFERRING PUBLIC GUARDIANSHIP AUTHORITY AND RESPONSIBILITIES**

## **Table of Contents**

<b>LEGISLATIVE CHARGE TO THE DEPARTMENT</b> .....	1
<b>SUMMARY OF RECOMMENDATION OPTIONS AND SUPPORTIVE PROPOSALS</b> .....	2
I. Summary of Recommendation Options, Costs and Policy Reforms .....	3
II. Summary of Supportive System Change Proposals .....	7
<b>HISTORY AND BACKGROUND REVIEW</b> .....	9
I. Introduction .....	10
II. History Including Previous Reform Proposals & Initiatives .....	12
III. Background .....	16
<b>NATIONAL AND STATE PERSPECTIVE ON PUBLIC GUARDIANSHIP</b> .....	27
I. Brief National Perspective .....	28
II. Minnesota Public Guardianship Status: Key Indicator Data .....	29
<b>PROBLEMS AND ISSUES ANALYSIS</b> .....	31
<b>DETAILED ACCOUNT OF RECOMMENDATION OPTIONS AND SUPPORTIVE PROPOSALS</b> .....	36
I. Structure and System Changes .....	37
II. Legislation and Policy Changes .....	39
III. Relevant Cost Estimates .....	42
IV. Funding Sources .....	45

## Table of Contents

<b>CONCLUSION</b> .....	48
<b>ACKNOWLEDGMENTS</b> .....	49
<b>REFERENCES</b> .....	50
<b>APPENDICES</b> .....	51
Appendix 1: Estimated Cost & Expense Itemizations .....	52
Appendix 2: Simple Amortization Schedule of Expenditure Depreciation and Population Reduction Under Proposed Office and Present System Models .....	58
Appendix 3: Definitions/Glossary .....	62
Appendix 4: Submitted Stakeholder Responses & Positions .....	70

# **LEGISLATIVE CHARGE TO THE DEPARTMENT**

---

## **Laws of Minnesota 2000 Chapter 429, Section 2**

### **Recommendations on Transferring Public Guardianship Responsibilities**

The Commissioner of Human Services, in consultation with representatives of interested groups, including family members, advocacy organizations, counties, service providers, the Office of the Ombudsman for Mental Health and Mental Retardation, and others, must develop specific legislative recommendations on transferring public guardianship responsibilities and related duties and authority under Minnesota Statutes, Chapter 252A, from the Commissioner of Human Services and counties to another entity that can independently and responsibly fulfill the guardianship and related obligations. To be eligible to perform these transferred duties, an entity must either be a multi-purpose agency that provides a broad range of social services or a new or existing office within state government that does not currently have operational or financial duties under Minnesota Statutes, Chapter 252A, and it must provide assurances that it will act in the best interests of each ward or conservatee, per Minnesota Statutes, section 525.539, subdivision 7. The legislative recommendations, including cost estimates, shall be provided to the Chairs of the House of Representatives Health and Human Services Policy Committee and the Senate Health and Family Security Policy Committee by December 15, 2000.



**SUMMARY  
OF  
RECOMMENDATION OPTIONS  
AND  
SUPPORTIVE PROPOSALS**





# **I. SUMMARY OF RECOMMENDATION OPTIONS, COSTS AND POLICY REFORMS**

---

There is a need for substitute decision-makers for vulnerable adults from all populations as the number of vulnerable and incapacitated adults increases each year with our aging population. Many of the 3,872 (based on state fiscal year 2000 figures, ending June 30, 2000) adults with mental retardation who are currently under the guardianship/conservatorship of the Commissioner of Human Services will continue to need substitute decision makers well into the 21<sup>st</sup> century. These adults under public guardianship are the focus of this report.

The recommended options outlined within this summary section and detailed within this report come from a rich history and background context of issues and problems facing both public and private guardianship/conservatorship in Minnesota. The recommendations within this report are presented as a means of assuring the responsible discharge and transfer of the Commissioner's public guardianship or conservatorship functions as well as assuring the establishment of continued appropriate legal representation alternatives for all state wards/public conservatees which adequately protect their legal rights, civil liberties, health, safety and general welfare. The proposed options, estimated costs, plausible funding sources and expected legislative/policy reforms are presented and reviewed within this summary section and report. These recommendations are as follows:

## **1. ESTABLISH A NEW OFFICE OF PUBLIC GUARDIANSHIP**

### ***Option***

Establish either an independent Office of Public Guardianship or an incorporated Public Guardianship Office as a division of another state department or agency (e.g., Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities, the Department of Human Rights, Attorney General's Office and the Office of the Governor). This approach would increase the autonomy of the Public Guardianship Office and decrease the Department of Human Services (DHS) Commissioner's appearance of a conflict of interest by separating the Public Guardianship Office from the Department's Continuing Care for People with Disabilities Cluster and Community Supports for Minnesotans with Disabilities (CSMD) Division, which have competing interests in such areas as eligibility determination, program design, service provision, monitoring, funding and policy development. This approach would separate public guardianship and case management roles, which usually are performed by the same person, thus, alleviating this inherent conflict of interest between the two roles. This approach would concurrently establish a separate infra-structure of designated public guardian/conservator representatives who could assure the ongoing provision of least restrictive and least intrusive legal representation alternatives to current public wards/conservatees via a continuing discharge movement.

## ***Costs***

The state would need the Legislature to initially appropriate approximately \$8,478,263 to \$8,770,831 per year, at today's costs, in order to support either an independent or an incorporated public guardianship office.

The higher dollar amount of \$8,770,831 per year, at today's costs, could initially support an office consisting of 108 full time equivalent (FTE) employees. This figure would include covering the start-up costs for personnel compensation, benefits and administrative office overhead expenses. This estimated cost would roughly translate into \$2,265.20 annually or \$188.80 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048 an employee-based model of an independent or incorporated office of public guardianship with 12.5 FTE staff supporting 404 state wards/public conservatees would cost \$915,138, at today's costs, less inflation and cost-of-living increases.

The lower dollar amount of \$8,478,263 per year, at today's costs, could initially support an office comprised of 48 FTE employees with the purpose of managing and quality monitoring about \$4,646,400 per year of subcontracted public guardianship legal representative and support services. This figure would include covering the costs for personnel compensation, benefits, administrative office overhead expenses and contract dollar expenditures to subcontracted entities carrying out the public guardianship services and functions. This estimated cost would roughly translate into \$2,189.64 annually or \$182.47 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048, an employee-contract paradigm of an independent or incorporated office of public guardianship with 6.5 FTE staff supporting 404 state wards/public conservatees would cost \$884,612, at today's costs, less inflation and cost-of-living increases.

## ***Legislation/Policy Reforms***

This approach would involve significant legislation and policy reform. The Legislature would have to expand the intent of Minnesota Statute, section 252A.17 via amended language to allow for this transfer of public guardianship/conservatorship authority, powers, duties and responsibilities to another public or private entity without engaging in the typical lengthy and elaborate court processes and proceedings required by law in order to discharge and concurrently appoint guardians or conservators. Feasibly, the Legislature would also have to allow for the revision of Minnesota Rules, part 9525.3080 in order to permit public guardianship functions to be subcontracted to another proxy entity with no other competing service provider interests. Inevitably, the Legislature would have to develop new public guardianship legislation and regulation while

"sunsetting" Minnesota Statute 252A Mental Retardation Protection Act, Minnesota Public Guardianship Rules, parts 9525.3010 to 9525.3100, all corresponding Public Guardianship Office administrative policy bulletins and amend related language in Minnesota Statutes, sections 525.539 - 525.705 and Minnesota Statutes, section 626.557, subdivision 10 (c)(2), of the Vulnerable Adults Act. It should be further noted that other disadvantages surround this approach as discussed within the *Other Difficulties* subsection of the *Problems* section of this report.

## **2. ESTABLISH AN EXPEDITIOUS DISCHARGE CAMPAIGN**

### ***Option***

Establish an aggressive community outreach campaign targeted toward promoting and facilitating family and friend assumption of guardianships, conservatorships or other forms of legal representation on behalf of loved ones who are state wards/public conservatees. The campaign could also include an aggressive outreach component targeted toward responsible and ethical contracting with private-sector, corporate guardianship organizations and professional conservatorship businesses within multi-purpose agencies that provide a broad range of social services to ensure that program service provision interests remain separate from the best-interests of the ward/conservatee. The campaign would require the development of guardianship, conservatorship and other legal representative information resources and training curricula for intensive instructional support to public-sector and private sector parties.

### ***Costs***

The campaign would require the addition of at least 1.5 FTE to a temporarily retained and maintained Public Guardianship Office (budgeted at approximately \$119,190 per year throughout the course of the initiative, less cost-of-living increases) in order to spearhead and handle an increased workload in the areas of policy development, technical assistance consulting, paralegal services, advocacy, daily operations, recruitment, training, contracting, monitoring and legal representation field presentations. This campaign would cost approximately \$4,765,590, at today's costs, which could be appropriated by the Legislature via allocations to the Community Social Services Act (CSSA) grants of the counties or as a special state public guardianship grant for counties and private entities.

### ***Legislation/Policy Reforms***

This approach would involve significant legislation and policy reform. The Legislature would have to revise Minnesota Statute 252A to include language that would discontinue the establishment of new public guardianships/conservatorships, discharge all current public guardianships/conservatorships to zero within an established time line, designate allowable benchmark caps for the number of public guardianships or conservatorships at

specified time periods, and proportionately and adequately fund the provision of public guardianship services and the accelerated discharge/closure campaign. The Legislature would also have to amend Minnesota Statutes, section 626.557, subdivision 10 (c)(2), of the Vulnerable Adults Act to eliminate referral of adults with mental retardation to public guardianship or public conservatorship pursuant to MS §252A. Subsequent revisions to Minnesota Public Guardianship Rules, parts 9525.3010 to 9525.3100 and all corresponding Public Guardianship Office administrative policy bulletins would have to occur in order to reflect statutory revisions to MS §252A.

## **II. SUMMARY OF SUPPORTIVE SYSTEM CHANGE PROPOSALS**

### **1. ENACT SUPPORTIVE AMENDMENTS TO MINNESOTA STATUTES, SECTIONS 525.539-525.705**

Regardless of which approach is adopted to transfer guardianship and conservatorship from the Commissioner, the Legislature could revise Minnesota Statutes, sections 525.539 - 525.705 to include provisions requiring:

- A. Standardized comprehensive evaluations for determining incompetency or incapacity
- B. Criminal background checks for qualifying suitability of proposed guardians/conservators
- C. Minimal education, training and development criteria
- D. Best-practice performance standards and codes of ethical conduct
- E. Mandatory written guardianship plans for assuring accountability
- F. Accessible alternative dispute resolutions
- G. Statutory caps on the number of guardianship or conservatorship cases private-sector corporate guardianship organizations and professional conservatorship businesses can retain
- H. Creating language within Minnesota Statutes, section, 525.703, subdivision 3, which clearly establishes or defines a readily accessible and easy to navigate process for recovering fees and expenses as well as what constitutes a reasonable fee structure or schedule that adequately meets prevailing fees and reimburses commensurate costs for all guardians and conservators.

### **2. ENSURE EXISTING AND POTENTIAL FUNDING SOURCES ARE BEING FULLY UTILIZED FOR SUPPORTING GUARDIANSHIP, CONSERVATORSHIP AND OTHER FORMS OF LEGAL REPRESENTATION FOR VULNERABLE AND INDIGENT ADULTS REGARDLESS OF DIAGNOSIS OR DISABILITY**

Regardless of which approach is adopted to transfer guardianship and conservatorship from the Commissioner, the Legislature should ensure that all government legislation and regulation pertaining to social service funds, programs, benefits, public subsidies, entitlements and property taxes contain provisions that require the ongoing and proportionate financing of necessary guardianship, conservatorship and legal

representation services for incapacitated or incompetent vulnerable and indigent adults regardless of diagnosis or disability. Legislators, courts, counties, public social service agencies and private providers of legal representative services need to further explore and analyze more effective utilization of Medical Assistance (MA), MA Waivers, Social Security Administration Benefits (SSA) such as Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI), Group Residential Housing (GRH) Allocations, Community Social Services Act (CSSA) Grants, Minnesota Supplemental Aid (MSA), General Assistance (GA), surcharges on legal/court document filing fees, property tax levies, state and county general revenue funds and supplemental needs trusts as viable funding sources for reimbursing costs and fees associated with guardianship, conservatorship and other forms of legal representation.

### ***Conclusion***

State laws that allow for guardianship and conservatorship must provide fiscal appropriations to permit quality services, including adequate funding, staffing and resource support for an Office of Public Guardianship. Presently, the state's expenditure for the Public Guardianship Office is approximately \$43,610 per year and the aggregate cost burden to the counties to perform public guardianship functions is estimated at approximately \$4,646,400 per year. Since 1989, the Legislature has appropriated only \$100,000 to seek alternatives to public guardianship/conservatorship services. Regardless of the approach adopted to transfer guardianship and conservatorship from the Commissioner of DHS, on-going funding from the Legislature is required. County agencies, the DHS Public Guardianship Office, and even private parties or vendors of legal representative services, will need support and resources to accomplish any proposed system change.

**HISTORY AND BACKGROUND REVIEW  
OF  
PUBLIC GUARDIANSHIP  
PROGRAMS AND SERVICES**





## **I. INTRODUCTION**

---

### ***Need for Substitute Decision-Makers***

There is a need for substitute decision-makers for vulnerable adults from all populations as the number of vulnerable and incapacitated adults increases each year with our aging population. The need for standardizing functions of substitute decision makers is also becoming more apparent as reports of exploitation, abuse, neglect, maltreatment, civil liberties and legal rights infringements of vulnerable adults increases. Many of the 3,872 (based on state fiscal year 2000 figures, ending June 30, 2000) adults with mental retardation who are currently under the guardianship/conservatorship of the Commissioner of Human Services will continue to need substitute decision makers well into the 21<sup>st</sup> century. These adults under public guardianship are the focus of this report.

Often substitute decision-makers are guardians, conservators, attorney-in-fact agents, proxies, trustees, executors, representative payees, third party guarantors, fiscal intermediaries, or responsible parties. Many are family members who act as de facto substitute decision-makers without becoming the person's legally authorized representative. Frequently, the terms fiduciary, guardian, conservator, substitute decision-maker, or surrogate decision-maker are used interchangeably when discussing general issues of best-interest decisions made on behalf of another. For the purposes of this report the terms "ward/guardian/guardianship" also include "conservatee/conservator/ conservatorship."

### ***Principles and Values***

Best practice standards for substitute decision making and service provision to vulnerable adults recognizes the increasing need and benefit of assuring that funding and services are consumer-directed to every degree possible. That decisions regarding services and outcomes should be made as close to the consumer as possible. That relationships with interested and involved persons who know and support the consumer are pivotal to assuring that these outcomes are achieved.

Through recent department initiatives such as the down-sizing of regional treatment centers, the negotiation of closures of large institutional intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR), the Performance Based Contracting Demonstration Project, the Robert Wood Johnson Foundation Self-Determination Project, the Region 10 Alternative Quality Assurance Licensing Project, and numerous consumer support amendments to the Medical Assistance funded Home and Community Based Services Waiver for Persons with Mental Retardation or Related Conditions (MR/RC Waiver), Minnesota has repeatedly demonstrated its commitment to alternative funding mechanisms and less restrictive service alternatives which provide persons receiving services greater control in decision making, service planning and delivery. Similarly, public guardianship can be reformed from its historically institutional-based protection and supervision model with its inherent conflicts of

interest and lack of close relationships to an array of less restrictive substitute decision making alternatives which focus on keeping decisions as close to the person as possible in order to preserve the person's civil rights and liberties.

The Department has recognized and taken actions to support the principles on which these outcomes are based, and acknowledges them through its core values:

We **focus on people**, not programs.

We are **responsible for the common good**.

We recognize and act upon our **mutual responsibility to each other**.

We **provide safety nets and ladders up** for the people we serve.

We are **partners with communities** to mobilize supports that **help people function and succeed**.

*We practice these shared values in an ethical environment in which trustworthiness, responsibility, respect, justice, fairness, and caring are of paramount importance.*

Using the principles and core values as a guide, public guardianship can be reformed from its historically institutional-based protection and supervision model with inherent conflicts of interest and lack of relationships to an array of less restrictive substitute decision making alternatives which focus on keeping decisions as close to the person as possible in order to enhance decision-making skills and experiences as well as preserve the person's civil rights and liberties.

## **II. HISTORY INCLUDING PREVIOUS REFORM PROPOSALS AND INITIATIVES**

---

Public guardianship was originally established in 1917 by the Legislature as a mechanism for the state to provide supervision, protection, and habilitation to children and adults with mental retardation and epilepsy. Currently, the only persons subject to public guardianship are adults (age 18 and over) with mental retardation (no other diagnosis or disability makes an adult subject to public guardianship) who are in need of the level of supervision and protection of a guardian and for whom there is no private person willing and able to act in this role. If the ward has a personal estate beyond that which is necessary for the ward's personal or immediate needs, then the commissioner must determine if a guardian of the estate is necessary. If so, a private guardian of the estate must be appointed.

At this time, there are approximately 3,872 adults with mental retardation under public guardianship. These persons are frequently referred to as "public wards," "state wards," "wards of the state" or "wards of the Commissioner." There are minors (children age 17 and under) who are made wards of the state following the termination of parental rights of their natural parents and due to there being no private person willing and able to act as guardian. These children are typically awaiting adoption into a permanent family. There are also veterans who may be subject to guardianship or conservatorship of their estates by the Department of Veterans Administration. County agencies may also be appointed by the court to act as guardian in some cases. These are all forms of public guardianship. Some county agencies also pay guardianship fees for the services of private professional guardians, an arrangement that is not considered to be a form of public guardianship. The following is the history of guardianship.

### **1917**

- Public guardianship services were established by the Minnesota Legislature as part of the first mandate to provide services to children and adults with mental retardation and epilepsy. Public guardianship was established concurrent with commitment to a state facility. Public guardianship was required in order to receive services from the state facility. Public guardianship provided the facility with legal standing or authority to make all treatment decisions during the course of the commitment period. The services provided included supervision, protection, and habilitation. There were no community-based services at this time. If the person was discharged from the state facility, ending the commitment, the public guardianship was not discharged, but continued.

### **1970**

- Minnesota Legislature passed Minnesota Statutes, chapter 252A, sections 252A.01 to 252A.21, referred to as the Mental Retardation Protection Act. This act separated the provision of services to persons with mental retardation from the mandated requirements of established public guardianship and state facility commitment.

## 1983

- Provision of habilitative services to persons with mental retardation separated from public guardianship by Minnesota Statutes, section 256B.092, which specified mandated services for the first time.

## 1985

- Legislature required DHS to coordinate a task force to report to the Legislature on public guardianship matters, which required an explanation of who public guardianship applies to and recommendations on expansion to other populations. This resulted in the 1986 Public Guardianship Study.

The recommendations from that study concluded that:

- 1) Expansion was not an option without reform and adequate funding
- 2) An independent public guardianship office be created
- 3) Regardless of action on other recommendations, that the staff and budget of the current public guardianship office be expanded.

The report identified four levels of guardianship from least to most restrictive:

- 1) Family and friends
- 2) Professional
- 3) Corporate
- 4) Public.

## 1987

- Minnesota Legislature changed the name of the *Mental Retardation Protection Act* to the *Public Guardianship for Adults with Mental Retardation Act*. Additional amendments also:
  - Specifically excluded children under the age of eighteen
  - Further clarified that public guardianship is the most restrictive form of guardianship
  - Required the duties of guardianship and case management not be performed by the same person
  - Defined rule making authority.

## 1989

- Legislature appropriated \$100,000 to seek alternatives to public guardianship.
- During SFY 1990 through SFY 1991, DHS undertook an initiative to discharge public guardianships to private guardianships. Increased discharge activity was limited to the duration of the initiative and the year following. The rate of discharges declined once the supports funded through the initiative were ended.
- Some counties have made a commitment to pay for private professional or corporate guardianship services from county funds, typically the County Social Services Act (CSSA) block grant from the state. One such county which had contracted with a corporate provider in order to discharge existing public guardianships could not absorb increases in the guardian's fees resulting in those previous public wards returning to public guardianship.
- This initiative discharged almost 500 persons from public guardianship; provided training to attorneys, private agencies, and other persons on guardianship topics; and published a report to the Legislature on those accomplishments.

## 1992

- Laws of Minnesota, chapter 465, section 2, required the Department to proceed with rule promulgation but removed the requirement to separate the roles of county staff acting as both case manager and guardian, unless the state provides sufficient funding to cover the additional costs of complying with the separation requirement, and except where otherwise required by state or federal law.
- This separation is currently required only under Minnesota Rules, part 9525.2780 for the purposes of the guardian giving consent for the use of aversive or deprivation procedures. It specifically states that the same county staff person must not act as both case manager and public guardian for the purposes of planning the use of the services and granting informed consent for their use.
- Legislature required DHS to form a task force to complete and submit a report to the Legislature by 1993 on recommendations for alternatives to the provision of public guardianship services and establishment of an independent office of public guardianship.
- The 1992 Task Force charged with creating the report made multiple recommendations to support the following outcomes:
  - 1) Creation of an independent state guardianship office
  - 2) Utilization of volunteers to fulfill guardianship responsibilities
  - 3) Provision of additional funding for public guardianship services.

- DHS recommendations in the report included that:
  - 1) An advisory group be convened to develop a plan for a two year pilot project of contracting for public guardianship using the standards of the public guardianship rule, Minnesota Rule Parts 9525.3010 to 9525.3100
  - 2) The pilot project should incorporate as many of the recommendations from the Task Force as possible
  - 3) The pilot include an extensive evaluation component and be completed by persons with expertise in the areas of research measurement and analysis
  - 4) Following completion of the pilot project, DHS complete and submit a Legislative report on the findings and make further recommendations for reform of public guardianship services.

### **1993**

- Public Guardianship Rule 175 - Minnesota Rules, parts 9525.3010 to 9525.3100 were promulgated and new standards were implemented.

### **III. BACKGROUND**

---

#### **OVERVIEW**

The Commissioner of Human Services is appointed by the court to act as guardian or conservator of the person for adults with mental retardation who need the level of supervision and protection of a guardian or conservator, and who have no private person willing and able to act in this role. Public guardianship is the most restrictive form of guardianship in Minnesota, and is always considered the choice of last resort when planning to meet a person's need for legal representation. If the ward has a personal estate beyond that which is necessary for the ward's personal or immediate needs then the commissioner must determine if a guardian of the estate is necessary. If so, a private guardian of the estate must be appointed.

There are approximately 3,872 adults with mental retardation in the State of Minnesota under public guardianship or conservatorship. This population represents about one fourth of all adults with mental retardation or a related condition known to the state, and represents about one third of all those adults receiving services for people with developmental disabilities (DD).

#### **PERSONS SUBJECT TO PUBLIC GUARDIANSHIP**

In Minnesota, public guardianship or conservatorship is carried out by the Commissioner of Human Services and is only available for adults, age 18 years or older, with mental retardation. This law does not apply to minors or persons with related conditions, mental illness, persons who are elderly or to any other condition or disability.

Adults with mental retardation who are under public guardianship are sometimes referred to as "public wards," "state wards," "wards of the state," or "wards of the Commissioner of Human Services." The preferred term or phrase emphasizes people first language, e.g., an adult (person first) with mental retardation who is a ward of the Commissioner. The Commissioner of Human Services acts as guardian or conservator for these people as appointed by court order.

Adults with mental retardation are the only group of vulnerable adults subject to public guardianship. Adults with mental health concerns, elderly persons, chemically dependent persons, or persons with traumatic brain injuries or related conditions are not eligible for public guardianship services. These other vulnerable adult populations needing legal representation receive those services either from less restrictive alternatives (e.g., power of attorneys, representative payees, protective court orders, case management service plans, etc.) to private guardianships or conservatorships. If guardianship or conservatorship services for a maltreated vulnerable adult are needed as defined in the Vulnerable Adults Act they are typically paid for via court and/or county funding for indigent persons, and/or through income from the persons estates.

## **PURPOSE OF PUBLIC GUARDIANSHIP**

The purpose of public guardianship according to Minnesota Statute 252A is to:

1. Provide supervision and protection to adult persons with mental retardation who are unable to fully provide for their own needs (MS 252A.01(a)(1)).
2. To protect adult mentally retarded persons from violation of their human and civil rights by assuring that they receive the full range of needed social, financial, residential, and habilitative services which they are entitled to by law (MS §252A.01(a)(2)).
3. To provide legal representation when no other acceptable alternative is available, and to safeguard the decision making powers of persons with mental retardation so that they are not restricted beyond the clearly established need (MS §252A.01(b)).

## **LEGAL PROCEDURES IN ESTABLISHING PUBLIC GUARDIANSHIP**

### ***Nomination***

Nomination of the Commissioner to act as public guardian is made by submitting a notarized sworn request directly to the Commissioner (nominations can be sent directly to the DHS Guardianship Office). The Commissioner may be nominated by:

1. The person with mental retardation, or
2. An interested person, including a public official, a spouse, parent, adult sibling, legal counsel, adult child, or next of kin, or
3. The current private guardian who is unwilling or unable to continue to act as guardian.

Within 20 working days of receipt of the notarized letter of nomination the DHS Public Guardianship Office will make an order for a comprehensive evaluation to be arranged by the local county social services agency in which the person resides.

### ***Comprehensive Evaluation***

The comprehensive evaluation consists of several reports which are submitted by the county agency staff to the DHS Public Guardianship Office as evidence. Based on these reports DHS will make a determination on behalf of the Commissioner of whether to accept or reject the nomination. The comprehensive evaluation, along with the DHS determination, is submitted to the court as evidence at the same time the petition is filed. The county agency prepares and forwards the comprehensive evaluation to the Commissioner within 90 days of



the date of the order for the evaluation from DHS. Each report must contain recommendations from the county staff as to the amount of assistance and supervision required by the proposed ward to function as independently as possible in society.

In accordance with Minnesota Statutes, sections 252A.03 and 252A.04, and Minnesota Rules, part 9525.3025, the comprehensive evaluation must consist of the following:

1. A medical report on the health status and physical condition of the proposed ward, prepared under the direction of a licensed physician.
2. A report on the proposed ward's intellectual capacity and functional abilities, specifying the tests and other data used in reaching its conclusions, prepared by a psychologist who is qualified in the diagnosis and treatment of mental retardation. This report should address the IQ score of the client.
3. A report from the case manager that includes:
  - A. Assessments - the most current assessment of individual service needs as described in the case management rules of the Commissioner, including an assessment documenting the person's decision-making skills
  - B. Individual Service Plan (ISP) - the most current ISP as described in the case management rules of the Commissioner
  - C. Relatives opinion - a description of contacts with and responses of near relatives of the proposed ward notifying them that a nomination for public guardianship has been made and advising them that they may seek private guardianship.

The county agency must prepare and submit the comprehensive evaluation to DHS Guardianship Office within 90 days from the date of the order. In addition, to be considered part of the comprehensive evaluation, all reports must be completed no more than twelve months prior to filing the petition under section 252A.05. If the proposed ward refuses to participate in any part of the comprehensive evaluation the petition may still proceed to hearing if the county director files an affidavit stating the proposed ward's refusal.

### ***Nomination Acceptance or Rejection***

The Commissioner will accept the nomination if the following criteria are met:

1. The person was diagnosed as being a person with mental retardation
2. The person is in need of the supervision and protection of a guardian or conservator
3. No other less restrictive alternative to public guardianship or conservatorship is available.

The commissioner will notify the county agency of the nomination acceptance or rejection within 20 working days from the receipt of the comprehensive evaluation from the county agency. If the Commissioner rejects the nomination, the person, parents, spouse, or near relatives may file a petition to appoint the Commissioner as public guardian.

### ***The Petition***

When the Commissioner agrees to accept a nomination for appointment as public guardian, the county agency shall petition the court on behalf of the Commissioner. The county attorney will prepare and file the petition in most counties, some counties use the legal services outside their county attorney's office. The comprehensive evaluation must be filed with the petition within 20 working days of the county agency's receiving the Commissioner's acceptance.

If the petition has been brought by a person other than the Commissioner or the county agency, then the Commissioner will forward a copy of a comprehensive evaluation completed within the last 12 months to the court upon notice of the petition. If a comprehensive evaluation has not been prepared within the last 12 months, the Commissioner will direct the county agency to arrange for a comprehensive evaluation to be prepared and forwarded within 90 days.

### ***Attorney Representation***

Upon the filing of the petition, a hearing date is then set and the court appoints an attorney to represent the proposed ward or conservatee unless counsel is provided by the proposed ward or conservatee or others. All of the proper notices must be served and the court visitor assigned and his or her report written and submitted. The attorney will visit with the person prior to the hearing and be given adequate time to prepare. It is the position of the Public Guardianship Office that all public wards or conservatees must be represented by an attorney in all court proceedings. The county attorney will represent the petitioner at the hearing if requested by the petitioner or by the court.

### ***After The Hearing***

In all cases the court will make specific written findings of fact, conclusions of law, and direct entry of an appropriate judgement and order. The court will order the appointment of the Commissioner as guardian or conservator if it finds:

1. The person is diagnosed as being a person with mental retardation
2. The person is incapable of exercising specific legal rights which must be enumerated in its findings;
3. The person is in need of the supervision and protection of a guardian; and

4. No appropriate alternatives to public guardianship or conservatorship exist that are less restrictive of the person's civil rights and liberties.

### ***Order and the Letters***

A copy of the order and the letters of guardianship or conservatorship must be issued by the court and served by mail upon the ward, the ward's counsel, the Commissioner, and the county agency.

## **OTHER LEGAL PROCEDURES INVOLVED IN PUBLIC GUARDIANSHIP: TRANSFERS, MODIFICATIONS AND TERMINATIONS**

### ***Modifications***

If a person no longer needs the complete supervision and protection of a guardian or conservator, but still needs some assistance with decision-making, it is possible to modify a guardianship to a conservatorship, or to modify the powers a conservator holds to allow the conservatee to make more decisions for himself/herself. The process for modification from guardianship to conservatorship or to modify the powers of a conservator is similar to the process for establishing a conservatorship or guardianship. A Petition for Modification is filed with the Court. A hearing date is set. Notice of the hearing is given to all interested persons. Evidence is given at the hearing showing that the person has functional capacity in specific areas, such that the right to make decisions in those areas should be restored to the individual. The Court will make an appropriate order. It is also possible that a conservator may need to get more powers from the Court than when the conservatorship was originally established. This is also handled through the modification procedure described above.

### ***Transfers of Guardianship Responsibility***

Any or all portions of the powers and duties that have been delegated by the Department to the county of guardianship responsibility, meaning the county in which guardianship has been established by the court (court of venue), may be transferred to the county of supervisory responsibility, meaning the county which carries out designated guardianship responsibilities, by written agreement between the two local agencies. Upon entering into a written agreement with the county of guardianship responsibility, the county of supervising agency is responsible for the ward. The county of guardianship responsibility must notify the Department of all transfers of responsibilities by submitting a written agreement to the Department within 30 calendar days of the effective date of the agreement. In accordance with this agreement, the county of supervisory responsibility is now responsible for all public guardianship responsibilities for the ward pursuant to Minnesota Rules, parts 9525.3010 to 9525.3100 (Rule 175). Please note that the original court file remains with the court in the county in which the guardianship was established, meaning the county of venue. Any future court actions related to the guardianship must be pursued in the county of venue, unless a formal transfer of venue is first obtained. Guardianship responsibility should always be with

the county in which the ward resides to assure adequate contact with the ward by the local public guardian.

### ***Transfers of Venue***

The county of guardianship responsibility may be changed by the court of venue through a transfer of venue to another court. This action is typically taken when the ward no longer has residence in the county of venue and that county of supervisory responsibility is financially responsible and is providing case management services to the ward. Both the county of venue and the county of supervisory responsibility must agree that the transfer of venue would be in the best interest of the ward and would assist the county of supervisory responsibility to better serve the needs of the ward.

### ***Terminations***

A public guardianship or conservatorship may terminate for the same reasons as a private guardianship or conservatorship and require the same court actions. Any court orders discharging or terminating a public guardianship or conservatorship must be submitted to the DHS Public Guardianship Office in order to close the file records. A public guardianship or conservatorship terminates upon the receipt of written notification regarding the death of a ward/conservatee, the discharge of the public guardianship or conservatorship by court order (with a possible concurrently issued order appointing a private party as a successor guardian or conservator), the restoration to full capacity of the public ward/conservatee, or when the whereabouts of the public ward or conservatee is unknown following a due diligent search. The court processes involved in these discharge or termination actions are similar to the process for establishing a guardianship or conservatorship.

## **COUNTY OF PUBLIC GUARDIANSHIP RESPONSIBILITY**

The duties of the Commissioner as the public guardian of the person are delegated through the Department to local county agencies according to Minnesota Statutes, chapter 252A and Minnesota Rules, parts 9525.3010 to 9525.3100. The Commissioner carries out his or her duties as the public guardian through persons delegated by statute and rule to act as the public guardian representative. These delegated public guardianship representatives are the staff of the DHS Public Guardianship Office and the staff of the local county agency. The county in which public guardianship is established is the county of venue and the county of public guardianship responsibility. The county board of each county designates certain staff to exercise public guardianship responsibilities. At the county level this person is most often the individual's case manager. Without adequate funding for public guardianship services, counties lack the resources to staff these roles separately, thereby creating a conflict of interest. This conflict is addressed in part through the standards of performance defined in Minnesota Statutes, chapter 252A, and in Minnesota Rules, parts 9525.3010 to 9525.3100. The performance standards defined in the statute and rule also assume that county case managers are sufficiently knowledgeable about the ward to perform their duties based upon the preferences, desires, wants, and needs of the ward.

## **PUBLIC GUARDIANSHIP POWERS**

The only powers that may be granted by the court to the public guardian or conservator are the powers of a guardian or conservator of the person which are contained in Minnesota Statutes, section 252A.111 and Minnesota Statutes, section 525.56, subdivisions 1 to 3. These are the same powers that pertain to private guardians or conservators of the person.

In Minnesota, private guardianships and conservatorships are governed by Minnesota Statutes, sections 525.539 to 525.705, and are administered through the local district probate courts. This law is applicable to anyone the court orders the appointment of a guardian or conservator. Private guardianship or conservatorship is available to anyone who is in need of legal representation to the extent of requiring a guardian or conservator. The legal authority and powers under public and private guardianship or conservatorship are as follows:

**1. To have custody of the ward/conservatee and to establish the place of residence**

The power to determine the ward's place of residence consistent with state and federal law, and the least restrictive environment consistent with the ward's best interest.

**2. Provide for care, comfort, and maintenance needs**

The duty to assure that provision has been made for the ward's or conservatee's care, comfort, maintenance needs, including food, shelter, health care, social and recreational requirements, and whenever appropriate, training, education, and habilitation or rehabilitation.

**3. Take reasonable care of personal effects**

The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian or conservator of the estate.

**4. Consent to medical or other professional care**

The power to give necessary consent to enable the ward or conservatee to receive necessary medical or other professional care, counsel, treatment, or service. The guardian or conservator will not consent to any medical care for the ward or conservatee which violates the known conscientious, religious, or moral belief of the ward or conservatee. No guardian or conservator may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court. The guardian or conservator must exercise informed consent in decision making.

**5. Contracts**

The power to approve or withhold approval of any contract the ward or conservatee makes, except for necessities.

## **6. Supervisory authority**

The duty and power to exercise supervisory authority over the ward or conservatee in a manner that limits the person's civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

## **7. Additional powers of the public guardian or conservator**

The public guardian or conservator also has these additional powers as allowed for in Minnesota Statute. These additional powers are not granted to a private guardian or conservator unless they re specifically requested in the petition and then ordered by the court .

- The power to permit or withhold permission for the ward to marry.
- The power to begin legal action or defend against legal action in the name of the ward.
- The power to consent to the adoption of the ward as provided in Minnesota Statutes, section 259.24.

## **THE FOUR FUNCTIONS OF A PUBLIC GUARDIAN**

### ***Planning***

Planning requires the public guardian to get to know the ward, know what benefits or entitlements the ward is eligible for, know what services are available, and ensure that services meet the criteria of least restrictive alternative and best interest.

### ***Protection of Rights***

Protection of rights requires the public guardian to take appropriate action if the ward's legal rights are abridged, or appear to have been abridged, and to pursue appropriate action on behalf of the ward according to applicable state and federal law.

### ***Consent Determination***

Consent determination requires the public guardian to determine whether specific actions are in the best interest of the ward, are least restrictive, and do not violate the religious, moral, or cultural beliefs of the ward. Some consents are "non-delegated," meaning county staff do not have authority to give consent, but must seek consent from the DHS Guardianship Unit. These consents include decisions to limit life-sustaining medical treatment, and decisions for certain medical treatments which require approval of the court prior to the guardians consent.

## ***Monitoring and Evaluation***

County staff are required to maintain close contact with the ward, but are required to visit only twice a year. County staff are required to complete periodic reviews on the progress and needs of wards.

## ***Annual Review***

The annual review requires the public guardian to monitor and evaluate services being provided to the ward to assure that the services are meeting the ward's physical, mental, and social needs. The appropriateness of the ward's legal status based on the ward's progress in these areas must be assessed.

The review of legal status is intended to determine whether the ward's need for guardianship as provided still exists. Following a thorough assessment of this need, the county agency must file for modification or termination of the public guardianship. This may include modifying from guardianship to conservatorship which is less restrictive; discharge of the public guardianship concurrent with appointment of a private guardian if there is a private person willing and able to act in that capacity; or restoration to capacity if the person is in fact capable of making decisions on his or her own behalf.

The county agency is required to submit the Annual Review to the court of venue, meaning the court in the county where the guardianship was established, as provided for by DHS policy. A court can waive the requirement that these reports be submitted to them if the county agency submits them instead to the DHS Guardianship Unit.

## **INTEREST-BASED DECISION MAKING AND CONSENTS**

### ***Delegated Consents***

The designated local public guardianship representative is delegated the power or authority to consent to most matters of planning and the provision of services for daily living for an individual who is a public ward or conservatee, including granting consent for the use of psychotropic medications and aversive/deprivation procedures. The county agency is required to separate the case manager functions from the public guardianship responsibilities for consents involving the use of aversive/deprivation procedures, Minnesota Rules, part 9525.2780 (Rule 40). In addition, the county may contract for the provision of public guardianship services for the purposes of authorizing the MR/RC screening document and the approval of the ISP, Minnesota Rules, part 9525.3080 (Rule 175).

### ***Non-Delegated Consents***

The Public Guardianship Office retains the power and decision-making authority to review and consent to requests which involve the following issues: Do Not Resuscitate Orders

(DNR), Limiting Medical Treatment Orders (LMT), Withholding/Withdrawing Artificially Administered Nutrition and Hydration Orders (WH/WD), research, any disputed or contentious matters which can not be resolved on behalf of the wards' best-interests at the local county level including the recruitment of advocacy representation, and the waiving of assessments required by Minnesota Rules, part 952524, Case Management Rule 185.

### ***Non-Delegated Consents Requiring Court Review***

Additionally, there are areas of consent which require a specific court order whether you are a private or a public guardian because these treatments are considered to be extremely intrusive. The consent determination process in these areas is limited by Minnesota statute 525.56, subpart (4)(a) to (4)(d). These areas are further regulated under the public guardianship rule 175, Minnesota Rules, part 9525.3060. The guardian, public or private, must petition the court of venue (where the guardianship was established) to seek authorization to implement these treatments: sterilization, electroconvulsive therapy, experimental treatment and psycho-surgery.

## **DUE PROCESS RIGHTS AND ADVOCACY REPRESENTATION UNDER PUBLIC GUARDIANSHIP**

### ***Due Process***

Minnesota Statutes 525.539, 252A and the Public Guardianship Rule 175, Minnesota Rules, parts 9525.3010 to 9525.3100 provide for the supervision and protection of persons under public guardianship of the Commissioner of Human Services. A person under public guardianship or conservatorship retains their legal due process rights in response to public guardianship decisions or actions taken by the local county agency or by the department when acting as public guardian. Three different levels of review of public guardianship matters can be requested by any interested person. These include:

1. An informal review by the Department of Human Services,
2. A petitioned de novo review by the court on any guardianship/conservatorship matter, or
3. An appeal from a court order of public guardianship.

None of these options preclude a person's legal right to exercise or pursue any other due process course of action under law or regulation (e.g., obtaining a lawyer, filing a formal complaint or charge with an enforcement authority, conciliation conferences, administrative hearings, depositions, mediations, arbitrations, court trials and appeals, etc.).



## *Advocacy*

A host of federal laws and regulations (e.g., U.S. Constitution, Bill of Rights, Civil Rights Act, Americans with Disabilities Act, IDEA, Vocational Rehabilitation Act, Fair Labor Standards Act, Age Discrimination in Employment Act, Developmental Disabilities Assistance and Bill of Rights Act, etc.) as well as a number of State statutes and rules (e.g., Minnesota Human Rights Act, Human Services Licensing Act, Vulnerable Adult Protection Act, Data Practices Act, Developmental Disabilities Case Management Statute, Ombudsman Law, Appeals Statute, etc.) provide certain protections and allow for due process advocacy for persons with developmental disabilities. In many cases these mandates require respective compliance/regulatory enforcement authorities to pursue legal, administrative, investigatory or even compensatory damage remedies to ensure the protection of, and advocacy for, the rights of persons with disabilities.

In addition to private-for-profit law offices and non-profit income-based legal aid services within the community, public wards, just as other people with mental retardation or related developmental disability conditions, have access to numerous eligibility-specific public and private advocacy and enforcement agencies; such organizations most notably include: ARC Chapters, Minnesota Disability Law Centers, Ombudsman for Mental Health and Mental Retardation - Developmental Disabilities Offices, PACER, Advocating Change Together (ACT), People First, Twin Cities Autism Society, United Cerebral Palsy of Minnesota, Epilepsy Foundation of Minnesota, Brain Injury Association of Minnesota, Down's Syndrome Association of Minnesota, Minnesota State Council on Disability, Office of the Attorney General, State or County Protection Units, State/County/City Departments of Human Rights, Department of Justice -EOE/AA Division and the Federal or State Departments of Labor-FLSA Wage and Hour Divisions.

Minnesota Statutes 525.539, 252A and the Public Guardianship Rule 175, Minnesota Rules, parts 9525.3010 to 9525.3100 clearly defines the role of the public guardian as one of protecting the legal rights and interests of the state ward. The public guardian must take appropriate action on behalf of a state ward, if the ward's legal rights are abridged, or, if actions by providers of public and private services do not meet the individual needs and best interests of the ward.



**NATIONAL AND STATE  
PERSPECTIVE  
ON  
PUBLIC GUARDIANSHIP**



## **I. BRIEF NATIONAL PERSPECTIVE**

It is nationally accepted practice that state guardianships and public conservatorships are the most restrictive and most intrusive forms of guardianship and conservatorship, and should be the legal representation of last resort. It is accepted nationally that immediate family, near relatives and friends are the first acceptable options for guardianship or conservatorship, that other non-professional, interested parties are the next best alternatives, that private professional guardianships/conservatorships are the next level of least restrictive and least intrusive legal representation, and that corporate guardianships/conservatorships are the final private sector interventions before resorting to public sector guardianships or conservatorships. The premise for this rationale is that private sector entities can typically provide more personalized and sensitive services to wards/conservatees, protecting their rights more responsively and thoroughly than the public sector.

Nationally, funding remains a serious issue for both public and private guardianship or conservatorship services. Most programs serving indigent or hard-to-serve wards/conservatees consider themselves under-funded. Under-funding problems produce significant difficulties in providing state-of-the-art, progressive guardianship/conservatorship services. Many states consider the lack of funding as the major impairment which prevents all clients who need guardianship/conservatorship services and legal representation from receiving guardianship/conservatorship services and representation.

Adequate funding is vital to the provision of quality guardianship/conservatorship services. Funding for public and private guardianship/conservatorship services nationally has primarily come from several sources: ward/conservatee financial assets, local county appropriations, state appropriations, federal appropriations, philanthropic foundation support (e.g., United Way), volunteer services and court document filing/legal process service surcharge appropriations.



## **II. MINNESOTA PUBLIC GUARDIANSHIP STATUS: KEY INDICATOR DATA**

---

Eighty six of Minnesota's 87 counties have public guardianship/conservatorship responsibility for state wards or public conservatees. An analysis of public guardianship activity key indicator data listed below for state fiscal years 1998, 1999 and 2000 reveals a few interesting trends when compared to past state fiscal years.

The first trend the key indicator data reflects is a significant movement away from the use of public guardianship/conservatorship as a means of legal representation for adults with mental retardation. SFY 1998, 1999 and 2000 data regarding newly established public guardianships and conservatorships represent the lowest numbers of cases established within the past 12 years. Since SFY 1989 through SFY 2000, 417 public guardianships/conservatorships have been established with 330 cases established between SFY 1989 through SFY 1994 and 87 cases established between SFY 1995 through SFY 2000. An every 4 year probe during this 12 year span further highlights this declining trend in the establishment of new public guardianship and conservatorship cases with SFY 1989 to 1992 yielding 286 new cases, SFY 1993 to 1996 yielding 102 new cases and SFY 1997 - 2000 yielding 29 new cases. Additionally, this correlates with a remarkable year-to-year decrease in the number of nomination requests for the Commissioner of DHS to act as public guardian/conservator of the person.

A second trend the key indicator data reveals is a significant deceleration and subsequent stabilization in the number of discharges (including restorations to full legal capacity). SFY 1998, 1999 and 2000 data regarding discharges and restorations show the more recent "leveling-off" or stabilizing pattern with only a slight downward tendency in the number of discharges and restorations. Since SFY 1989 through SFY 2000, 1,295 public guardianships/conservatorships have been discharged with 807 cases discharged between SFY 1989 through SFY 1994 and 488 cases discharged between SFY 1995 through SFY 2000. Again, an every four year sampling probe during this 12 year span further highlights this declining and stabilizing trend in the discharges of public guardianship/conservatorship cases with SFY 1989 to 1992 yielding 603 discharged cases, SFY 1993 to 1996 yielding 349 discharged cases and SFY 1997 to 2000 yielding 343 discharged cases. Earlier high discharge volume can be directly attributed to a discharge initiative where the Legislature appropriated \$100,000 to seek alternatives to public guardianship while latter discharge decline and low volume stabilization can be directly attributed to the cessation of this project's funding source. Because of funding and resource deficiencies, counties have taken varying degrees of action toward providing families and interested others with information, technical assistance and support in order to encourage their appointment as private legal representatives for their loved ones.

The third trend demonstrated by the key indicator data is that death closures have remained relatively stable year-to-year. Discharges and restorations still lag behind deaths as grounds for terminating public guardianships. The majority of movement off of the public guardianship rolls

has been and continues to be due to deaths of state wards/public conservatees. With present attrition averaging about 4.6 percent per year, it can be anticipated that the public guardianship population will be approximately 404 state wards/public conservatees by the year 2048.

**Public Guardianship Activity Key Indicator Data For SFY 1998, 1999 & 2000**

	<b>SFY 1998</b>	<b>SFY 1999</b>	<b>SFY 2000</b>	<b>Total</b>
<b># of State Wards / Public Conservatees</b>	<b>4,266</b>	<b>4,052</b>	<b>3,872</b>	<b>4,266</b>
<b>Nominations</b>	<b>16</b>	<b>12</b>	<b>13</b>	<b>41</b>
<b>Acceptances</b>	<b>8</b>	<b>6</b>	<b>8</b>	<b>22</b>
<b>Denials</b>	<b>6</b>	<b>5</b>	<b>5</b>	<b>16</b>
<b>Established</b>	<b>9</b>	<b>6</b>	<b>5</b>	<b>20</b>
<b>Discharges / Restorations</b>	<b>88</b>	<b>106</b>	<b>81</b>	<b>275</b>
<b>Deaths</b>	<b>105</b>	<b>115</b>	<b>106</b>	<b>326</b>
<b>Year-To-Year Net Change</b>	<b>-185</b>	<b>-214</b>	<b>-180</b>	<b>x = -193</b> <b>(4.6% attrition)</b>



**PROBLEMS AND ISSUES ANALYSIS  
OF THE  
MINNESOTA PUBLIC GUARDIANSHIP  
SYSTEM**



## **PROBLEMS AND ISSUES ANALYSIS**

---

Public guardianship, as an unfunded mandate, must be reformed from its historical, institutional-based protection and supervision approach, with its inherent conflicts of interest, lack of close relationships with wards and lack of sensitive legal representation, to an array of less restrictive and less intrusive substitute decision making alternatives.

### ***Conflicts of Interests***

The conflict of interest issues are not new matters within the present public guardianship system. In fact, conflict of interests occur at both the state and county levels of public guardianship administration.

Currently, the Commissioner of DHS, as a public guardian, can not avoid the appearance of conflicts of interest. The Public Guardianship Office and program services are positioned and operating within the DHS Continuing Care for People with Disabilities Cluster and Community Supports for Minnesotans with Disabilities (CSMD) Division. The same cluster and division that provides representation and advocacy for state wards or public conservatees also has competing interests in the areas of eligibility determination, program design, service provision, monitoring, funding and policy development. The Commissioner's obligation to address issues involving program eligibility, services, funding and policy interests could and has directly competed or conflicted with his/her obligation to advocate for best-interest decisions made on behalf of state wards or public conservatees.

Similarly, the county in which public guardianship is established is the county of venue and the county of public guardianship responsibility. The county board of each county designates certain staff to exercise public guardianship responsibilities. At the county level this person is most often the individual's case manager. Without adequate funding for public guardianship services, counties lack the resources to staff these roles separately, thereby creating a conflict of interest. County staff acting as the public guardian representative have a responsibility to advocate for and assure that the ward's best-interests, values, and preferences are always first and foremost in all decisions made. County staff acting as case manager also must assure that all programs and services coordinated are feasible and cost effective according to county and state policy and procedures.

### ***Legal Representation Issues***

The Minnesota adult public guardianship system does not serve and legally represent all people with disabilities or impairments, who may need service and legal representation due to incompetence or incapacities, but have no one in the private sector suitable and willing to assume a position of legal standing in order to represent their best-interests on their behalf. Serious consideration needs to be given to the legal representation needs of other indigent vulnerable adults in the State of Minnesota, who are incompetent or incapacitated and have no one in the private sector suitable and willing to assume a position of legal standing in

order to represent their best-interests on their behalf. These needs are only partially addressed via the Vulnerable Adults Act. However, counties experience the same resource limitations in this area as they do under public guardianship and many needs for substitute decision makers for the elderly or persons with disabilities other than mental retardation remain unmet.

Public guardianship/conservatorship does not always adequately serve and legally represent state wards or public conservatees in a manner that consistently ensures wards'/conservatees' best-interests. Many public guardianships continue to exist simply due to the historical use of institutional service models. They do not reflect an actual need for this level of restrictive supervision and protection or a need for this level of intrusive legal representation. In some cases, the state wards/public conservatees receive no public guardianship/conservatorship services at all, but still remain upon the public guardianship roll as an active case when they should be discharged or restored and their file records closed. One possible contributing factor is that state wards/public conservatees are usually just one of many individuals comprising a county social worker's sizeable caseload which can range from 31 to 100 people with a state-wide average of approximately 54 people on any given case manager's caseload. If public guardianship services as defined in statute and rule are not being provided to the ward at the local level, then the commissioner is not meeting his/her mandated duties or responsibilities as directed by the court.

Persons under public or private guardianship/conservatorship have the right to petition the court to have the guardianship/conservatorship modified or terminated. If needed the court must appoint an attorney to represent the ward/conservatee. Frequently though this process takes too much time, and the complexities of accessing the court are difficult to overcome. As a result such petitions may not be filed and wards/conservatees do not have their rights adequately protected against continued unnecessary guardianships/conservatorships or adverse, if not harmful, guardians'/conservators' decisions and actions.

Persons under public or private guardianship/conservatorship need access to available alternative dispute resolution or mediation processes when they or interested others believe that the wards'/conservatees' rights have been violated or are at risk of maltreatment by the guardian/conservator. These options need to be responsive, timely, affordable, easily understood and overseen by the court.

Finally, a standardized evaluation system needs to be established which assures a person's need for legal representation is appropriately assessed and that services provided are the least restrictive and least intrusive alternatives.

### ***Other Difficulties***

The incorporation of the Public Guardianship Office into other state departments and agencies has periodically been recommended. Suggested departments and agencies have included the Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities, DHS - Licensing Division -Vulnerable Adult Protection Unit, the Department of

Human Rights, and the Attorney General's Office. However, incorporating the Public Guardianship Office as a division of these departments and agencies also has some significant drawbacks. One disadvantage would involve the potential for even worse conflicts of interests than already exist under the present system of public guardianship. The integrity of independent functions such as case selection, review, investigation, enforcement, litigation and sanction could be greatly compromised, if these departments and agencies had to intervene in public guardianship matters. Their roles could certainly be at odds or competing against each other. Another challenge to the feasibility of this solution is the absence of a comparable infra-structure equivalent to the existing support system of case managers assuming public guardianship agent or representative positions under the current public guardianship system.

Similarly, it has been periodically proposed that an independent office of public guardianship be established and placed under the auspices of the Governor, just like the Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities. However, such an arrangement still provides no substantial alleviation from the appearance of conflict of interest or any relief from the likely potential for conflicts of interest. Matters of state government and/or political interests could directly compete with issues of best-interest decisions, civil liberties, personal freedom, legal rights, due process protection and advocacy on behalf of state wards/public conservatees. Again, this recommended solution would have no immediate comparable infra-structure equivalent to the existing support system of case managers assuming public guardianship agent or representative positions under the present public guardianship system.

Both the incorporated public guardianship office option and the independent office of public guardianship alternative suffer from plausible conflicts of interest. Both would require the expensive creation of an infra-structure system. The incorporated public guardianship office option and the independent office of public guardianship alternative would require extensive public guardianship legislation reform, including the "sunsetting" of existing public guardianship laws, rules and administrative policy bulletins as well as the development of new public guardianship statutes and rules. Additionally, both propositions would require related language amendments or revisions to the private guardianship/conservatorship law and vulnerable adult protection mandates. Adopting either of these approaches does not eliminate the public institutional nature of public guardianship. Adopting either of these approaches will be further reviewed and analyzed under the recommendations, costs and funding sections of this report.

Costs (attorneys fees, court costs, legal process surcharges, etc.) involved with the establishment of alternative forms of legal representation outside of public guardianship/conservatorship (private guardianships/conservatorships, power of attorneys, etc.) also can be a significant financial obstacle or barrier, yielding a disincentive to establishing other forms of substitute or surrogate decision-making.

Private-sector, corporate guardianship organizations and professional conservatorship businesses are increasing in number, but remain scarce and limited in scope when compared

to the growing need for legal representation among the expanding elderly and disability populations within Minnesota. Corporate guardianship programs and professional conservatorship firms are largely independent and unregulated operations, whose quality of services and legal representation of wards or conservatees is not addressed within Minnesota Statutes, sections 525.539 to 525.705 or anywhere else. These private sector entities, too, suffer from competing or conflicting interests: the interests of sustaining a viable/profitable business, including appeasing the counties as an account referral source vs. strongly advocating for wards'/conservatees' needs and best-interests which could come into conflict with the counties intervention plans for the consumer; or maintaining excessively large, revenue-producing caseloads which would compromise a sound relationship-based model where the legal representative is familiar with, and can advocate for, the person's informed choices, preferences, needs, desires, wishes, values, and beliefs. In some cases, guardianship/conservatorship enterprises are embedded within a parent company that offers other human service programs, again, creating a pitfall of competing interests between other social services interests and guardianship/conservatorship best-interests. It should be further noted that in matters of providing guardianship/conservatorship services to indigent clients, these practices suffer from a system (i.e., courts or counties) which provides not only obstacles to available funds, but deficient compensation for prevailing fees and incurred expenses.

Best-practice standards for performance and ethical codes of conduct need to be developed which will apply to families, interested persons, professional and corporate guardians/conservators or others acting as legal representatives to set minimum requirements for substitute decision making.

Mandatory training for guardians, conservators and other legal representatives needs to be established and maintained in order to develop and build local capacity for these services from a variety of resources to avoid over-reliance on a limited array of guardianship services in the private and/or non-profit sector.

Methods to monitor and evaluate the performance of guardians/conservators need to be enhanced and supported to assure guardians/conservators are held accountable for their actions on behalf of wards.

Finally, many states, including Minnesota, with large public guardianship programs have problems with decreasing funds and resources. DHS-CSMD budget cuts and human resource reductions have reduced the Public Guardianship Office to one professional staff member operating at a .25 to .50 FTE.

**DETAILED ACCOUNT  
OF  
RECOMMENDATION OPTIONS  
AND  
SUPPORTIVE PROPOSALS**





## **DETAILED ACCOUNT OF RECOMMENDATIONS AND SUPPORTIVE PROPOSALS**

---

The following series of proposed recommendations are presented in order to assure responsible discharge and transfer of the Commissioner's public guardianship/conservatorship functions as well as assure continued appropriate legal representation for all state wards/public conservatees with adequate protection of their rights, liberties, health, safety and general welfare.

### **I. STRUCTURE AND SYSTEM CHANGES**

Increase the autonomy of the Public Guardianship Office and decrease the DHS Commissioner's appearance of conflict of interest by separating the Public Guardianship Office from DHS' Continuing Care for People with Disabilities Cluster and Community Supports for Minnesotans with Disabilities (CSMD) Division which has competing interests in such areas as eligibility determination, program design, service provision, monitoring, funding and policy development.

Maximally, establish either an independent Office of Public Guardianship or an incorporated Public Guardianship Office as a division of another state department or agency (e.g., Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities, the Department of Human Rights, Attorney General's Office and the Office of the Governor).

Minimally, re-position the Public Guardianship Office directly under the leadership of the Commissioner or Assistant Commissioner in order to expand access as a critical resource available to all divisions and clusters that deal with issues of legally authorized representatives and formal substitute decision makers.

Maximally, separate public guardianship and case management roles, which usually are performed by the same person, due to the inherent conflict of interest between the two roles. Concurrently, establish an infra-structure which can assure the on-going provision of least restrictive and least intrusive legal representation alternatives to cur public wards/conservatees and manage the discharge process.

Minimally, pursue contracts for public guardianship/conservatorship services either as currently allowed for under the statute and rule for the purposes of completing DD Screening Documents and developing Individual Service Plans or for purposes that may be allowed for under proposed revisions to statute and proposed amendments to rule.

Establish an aggressive community outreach campaign targeted toward promoting and facilitating family and friend assumption of guardianships, conservatorships or other forms of legal representation on behalf of their loved ones. The campaign could also include an aggressive outreach component targeted toward responsible and ethical contracting with private-sector, corporate guardianship organizations and professional conservatorship

businesses within multi-purpose agencies that provide a broad range of social services to ensure that program service provision interests remain separate from the best-interests of the ward/conservatee. Minimally, finance the addition of 1.5 FTEs to a Public Guardianship Office in order to spearhead and handle an increased workload in the areas of policy development, technical assistance consulting, paralegal services, advocacy, daily operations, recruitment, training, contracting, monitoring and legal representation field presentations to the public which would be involved with any discharge initiative.

Further develop guardianship, conservatorship and other legal representative information resources and training curricula for intensive instructional support to public-sector and private sector parties.

Vigorously pursue discharge and closure of non-active or inappropriate public guardianship cases.

Any existing form of public guardianship/conservatorship should be deemed and maintained as only a temporary and provisional last resort when all other forms of private guardianship or conservatorship alternatives have been exhausted and other qualified private guardians or conservators are unwilling and unable to serve.

## II. LEGISLATION AND POLICY CHANGES

***Develop New Public Guardianship Legislation and Regulation While Sunsetting Minnesota Statute 252A Mental Retardation Protection Act, Minnesota Public Guardianship Rules, parts 9525.3010 to 9525.3100, All Corresponding Public Guardianship Office Administrative Policy Bulletins and Amend Related Language in Minnesota Statutes, sections 525.539 - 525.705 and Minnesota Statutes, section 626.557, subd. 10 (c)(2) Vulnerable Adults Act.***

Engage in extensive public guardianship legislation reform. "Sunset" existing public guardianship laws, rules and administrative policy bulletins. Revise or amend related language within the private guardianship/conservatorship law and the vulnerable adult protection mandates. Develop new public guardianship statutes and rules to support either an independent office of public guardianship or an incorporated public guardianship office as a division of another state department or agency (e.g., Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities, the Department of Human Rights, Attorney General's Office and the Office of the Governor). Design new public guardianship statutes and rules to support an expeditious or accelerated discharge initiative.

***Revise Minnesota Statute 252A Mental Retardation Protection Act to:***

Allow the Commissioner of DHS to legally transfer public guardianship/conservatorship authority to another public or private entity without engaging in the typical lengthy and elaborate court processes and proceedings required by law in order to discharge and concurrently appoint guardians or conservators. Expand the intent of Minnesota Statute, section 252A.17 via amended language to allow for this transfer of public guardianship/conservatorship powers, duties and responsibilities as well as allow for the subcontracting of the public guardianship/conservatorship functions to a proxy entity with no other competing service provider interests.

Include appropriations language in order to proportionately and adequately fund the provision of public guardianship services and accelerate discharge/closure functions.

Discontinue the establishment of new public guardianships for adults with mental retardation.

Delineate a decelerating schedule of annual allowable caps for the total number of public guardianship/conservatorship cases to be retained by the Commissioner, yearly. Establish a time-line for reducing the total number of public guardianships/conservatorships in order to be in compliance with a set cap. These figures could also include naturally occurring attrition via deaths of public wards/conservatees.

***Revise Minnesota Statutes, section 626.557, subd. 10 (c)(2) Vulnerable Adults Act.***

Eliminate the referral of adults with mental retardation to public guardianship/conservatorship pursuant to proposed changes within MS §252A.

***Revise Minnesota Public Guardianship Rules, parts 9525.3010 to 9525.3100 and All Corresponding Public Guardianship Office Administrative Policy Bulletins.***

Reflect proposed statutory revisions of MS §252A within Minnesota Rules, parts 9525.3010 to 9525.3100, especially including modifications to the language of subpart 9525.3080 to allow for expanded subcontracting of public guardianship/conservatorship functions, duties and responsibilities to another proxy entity with no other competing service provider interests.

***Revise Minnesota Statutes, sections 525.539 - 525.705.***

*Require qualifying criminal background checks of suitability* - Include minimal requirements for criminal background checks of guardians and conservators with demographic information and data stored in a central statewide registry to be accessed by each court. This resource should include checks on substantiated cases of abuse, neglect, exploitation or other forms of maltreatment of vulnerable adults and children.

*Require and enforce minimal education, training and development criteria* - Include minimal education, training and on-going development requirements for guardians and conservators prior to issuance of appointing court orders and permanent letters of guardianship/conservatorship. Establish requirements for demonstration of competence via tests or certifications. At a minimum this could require viewing a video and reviewing a handbook in conjunction with a simple pre- and post-training test.

*Require adherence to and enforce best-practice performance standards and rules of ethical conduct as defined by recognized authorities in state and/or national guardianship associations* - Performance standards and codes of conduct should minimally address:

- 1) Basic statutory duties
- 2) Avoidance of conflict of interest
- 3) Rights of wards and conservatees
- 4) Guardian/conservator legal responsibilities and activity requirements
- 5) Assessment and evaluative monitoring of the ward's/conservatee's living situation
- 6) Consent guidelines regarding behavioral services, psychotropic/neuroleptic medications, medical treatment and limiting life-sustaining interventions
- 7) Guidelines regarding the disposition of real property and managing financial assets
- 8) Responsibilities upon the death of the ward/conservatee.

Require a court mandated comprehensive evaluation to be completed as necessary material evidence of incompetence or incapacity - Assure that proposed wards/conservatees are adequately assessed via a standardized battery of evaluative tools or instruments that can clearly and convincingly yield measurements which would constitute a determination of incompetence or incapacity.

Require and enforce guardianships and conservatorships as legal representative options of the last resort - Insist the court review a clear and convincing presentation of evidence that proves other lesser restrictive and lesser intrusive forms of legal representation of the person and estate will fail to meet the protective needs of the individual.

Establish accessible dispute resolution - People under guardianship/conservatorship need access to advocates and alternative dispute resolution forums or mediation processes when they or interested others believe that the wards'/conservatee's rights have been violated or they are at risk of neglect, abuse, exploitation or other such maltreatment by the guardian/conservator. These available alternative dispute resolution forums or mediation processes need to be responsive, timely, affordable, easily understood and overseen by the court.

Establish statutory caps for the number of guardianship or conservatorship cases private-sector corporate guardianship organizations and professional conservatorship businesses can retain - Set legal restrictions or limits in law on the amount of wards and conservatees that can comprise the caseloads of any professional guardian or professional conservator.

Require written guardianship plan to assure accountability - Require filing of a written comprehensive guardianship/conservatorship plan by the guardian or conservator within 60 days of appointment or within the same time frame as filing an inventory record. The plan should be outcome oriented and address: how the guardian/conservator proposes to enhance and protect the ward's/conservatee's well-being and rights, encourage and support the ward's/conservatee's independence, establish future plans to provide for the ward's/conservatee's care and allocate resources. The annual report to the court would continue to be required, but would be more comprehensive. In it the guardian or conservator would propose amendments to the original plan based on progress in outcomes from the previous year.

Amend the language of section, 525.703, subdivision 3 - Revise the language of this subsection and item in order to clearly establish and define what constitutes a reasonable fee structure or schedule that adequately meets prevailing fees, reimburses commensurate costs and recovers expenses. Delineate a process that is readily accessible and easy to navigate for all guardians and conservators.

### III. RELEVANT COST ESTIMATES

#### *Past Projections*

The exact costs of performing the public guardianship and conservatorship function have been traditionally difficult to pinpoint and project. A 1985 survey of Minnesota county social service agencies estimated an average annual cost of \$5,745 per ward/conservatee. Using this figure, performing the public guardianship and conservatorship function would have yielded a total cost of approximately \$38,824,710 at that time and approximately \$22,244,640 now. The study's estimations of costs involved with performing the public guardianship/conservatorship function suffered from a confounding lack of clarity or delineation between what comprised case manager duties and what constituted public guardianship responsibilities. This confusing overlap or lack of a distinctive separation between roles appears to account for this report's inflated figure. On the other hand, a 1992 survey of Minnesota county social service agencies yielded a statewide estimate of approximately \$2 million which equated to an average annual cost of approximately \$378.79 per ward/conservatee at that time and an average annual cost of approximately \$515.53 per ward/conservatee, today. The shortcoming of this study's estimations of costs involved with performing the public guardianship/conservatorship function was that it only took into account county personnel costs and nothing else. This study's cost estimations fell far below the national average for similar large public guardianship programs at that time which was approximately \$1,000 to \$1,300 per ward annually.

#### *Commonly Associated Costs*

Currently, discharge costs are approximately \$300 on average for each ward's/conservatee's case with court costs comprising about \$150 and legal service costs, including attorney's fees for indigent clients, typically ranging from \$50 to \$150 depending upon the case being contested or uncontested. With these figures in mind, at face value it would appear that discharging all public guardianship/conservatorship cases would cost an estimated total of \$1,161,600 at today's costs. This present cost estimation would breakout to approximately \$232,320 across a five-year period of time and about \$116,160 over a ten-year time period, less 2 to 3 percent inflation.

It should be noted that a few variables may help to indeterminately avert and reduce some of these estimated costs. First, the Commissioner's costs for petitions and other legal process involved in supporting discharges are prepared by the county attorneys and absorbed by the county. Secondly, a number of private petitioners seeking nominations and appointments for private guardianships or conservatorships will be proceeding as pro se litigants in uncontested cases. Finally, a vast majority of state wards and public conservatees will be eligible to proceed in forma pauperis with the accrued debt eventually credited to the state treasury and general fund via county auditor and county treasurer offices.

### ***Related On-going Guardianship/Conservatorship Fees & Costs***

Private professional guardianship/conservatorship fees can range from \$25 to \$100 per hour with \$30 to \$75 per hour being an average range of fee structure. Some agencies providing guardianship/conservatorship services charge varying fees based on the service provided (e.g., professional legal representative services = \$37 per hour, case management administrative work = \$20 to \$37 per hour, and clerical support \$20 per hour).

A monthly capitated flat fee system is also typically used by many guardianship/conservatorship agencies in contract with counties, whereby the guardian or conservator provides a minimum number of hours per month in contact with the ward/conservatee or working on the case. A conservative estimate of the typical monthly capitated amount charged within this flat fee arrangement would be \$100 per month for serving as guardian/conservator of the person or estate, and more if the guardianship or conservatorship encompassed both the person and estate. This rate would typically require a minimum of two hours client contact or file record administration depending on the complexity of the case.

With ongoing fees for guardianship/conservatorship legal representation and support services estimated at approximately \$1,200 annually for each ward/conservatee, the projected costs for continued guardianship/conservatorship legal representation and support services for the remaining population of state wards/public conservatees when discharged from public guardianship or conservatorship would be \$387,200 monthly at today's costs and \$4,646,400 yearly, unadjusted for reasonable annual inflationary increases for service. However, it should be further extrapolated that only 85 percent of the remaining state ward/public conservatee population when discharged from public guardianship/conservatorship would require on-going guardianship/conservatorship legal representation and support services, thus yielding costs of \$290,400 per month and \$3,484,800 per year, less inflation.

### ***Administrative Expenses***

Regardless of the funding or operating options pursued, it will always be necessary to commit financial resources to the Public Guardianship Office and county agencies in order to cover a host of administrative costs involved with any massive public guardianship/conservatorship program or discharge initiative. The state and counties will experience increased overhead expenses related to the functions of public guardianship termination, transfer, concurrent contracting, establishment of private forms of legal representation, outreach recruitment for private forms of legal representation, training, technical assistance procurement, monitoring and follow up evaluation.

Minimally, the state will need to add 1.5 FTE to the Public Guardianship Office in order to support the counties and handle an increased workload in the areas of policy development, technical assistance consulting, paralegal services, advocacy, daily

operations, recruitment, training, contracting, monitoring and guardianship/conservatorship field presentations to the public. The Commissioner's burden of expense for increased staff and resource investment into the Public Guardianship Office would be approximately \$119,190 per year throughout the course of a massive discharge initiative, less cost-of-living increases. Presently, the state's expenditure for the Public Guardianship Office is approximately \$43,610 per year and the aggregate cost burden for the counties to perform public guardianship functions is estimated at approximately \$4,646,400 per year.

Maximally, the state would need the Legislature to initially appropriate approximately \$8,478,263 to \$8,770,831 per year, at today's costs, in order to support either an independent or an incorporated public guardianship office.

The higher dollar amount of \$8,770,831 per year, at today's costs, could initially support an office consisting of 108 FTE employees. This figure would include covering the start-up costs for personnel compensation, benefits and administrative office overhead expenses. This estimated cost would roughly translate into \$2,265.20 annually or \$188.80 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048 an employee-based model of an independent or incorporated office of public guardianship with 12.5 FTE staff supporting 404 state wards/public conservatees would cost \$915,138, at today's costs, less inflation and cost-of-living increases.

The lower dollar amount of \$8,478,263 per year, at today's costs, could initially support an office comprised of 48 FTE employees with the purpose of managing and quality monitoring about \$4,646,400 per year of subcontracted public guardianship legal representative and support services. This figure would include covering the costs for personnel compensation, benefits, administrative office overhead expenses and contract dollar expenditures to subcontracted entities carrying out the public guardianship services and functions. This estimated cost would roughly translate into \$2,189.64 annually or \$182.47 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048 an employee-contract paradigm of an independent or incorporated office of public guardianship with 6.5 FTE staff supporting 404 state wards/public conservatees would cost \$884,612, at today's costs, less inflation and cost-of-living increases.



#### IV. FUNDING SOURCES

County agencies, DHS-Public Guardianship Office and even private parties or vendors of legal representative services will need support and resources to accomplish any proposed system change. Below is a compendium of traditional and possible funding sources for compensating costs and fees associated with guardianship and conservatorship. These funding sources need to be further explored and analyzed for effective utilization by legislators, courts, counties, public social service agencies and private providers of legal representative services.

##### *Existing Funding Mechanisms*

Community Social Services Act (CSSA) Grants to Counties - The Legislature could mandate an increase in funds to county CSSA grants and direct that the additional money be dedicated to supporting state ward/conservatee discharges and establishing needed ongoing legal representative services and support. The aggregate appropriation, which could be proportionately distributed to each county's CSSA grant based upon the number of public wards/conservatees within the county's charge or responsibility, would be approximately \$4,765,590. This figure is the approximate cumulative sum of estimated total discharge costs combined with projected fees for one year of continued legal representative services plus ongoing monitoring, training and development.

Social Security Administration Benefits (SSA): Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI) - Target 5 percent of the state ward's/public conservatee's social security income, as allowed for by law, to pay for incurred guardianship/conservatorship costs and fees. Offset the loss of income with an allowable increase in other public subsidies such as Minnesota Supplemental Aid (MSA) and or General Assistance (GA).

Group Residential Housing (GRH) Allotment - Obtain up to 5 percent of a person's income to pay for rendered guardianship/conservatorship services as GRH regulation permitted special needs services. Access available sources of personal income or financial assets such as compensation, securities, settlements, public subsidy benefit back payments, inheritances, estates, pensions, retirement accounts, social security, etc. Again, loss of income can be offset with allowable increases in public subsidies and other eligible service entitlements.

Supplemental Needs Trusts - Pursue a reasonable use of these funds as a last resort to cover guardianship/conservatorship costs and fees.

Direct Payment - Collect costs and fee charges directly from wards and conservatees who have income in excess of 125 percent of poverty levels on a sliding scale basis.

Surcharges on Legal/Court Document Filing Fees - Designate a portion of surcharges assessed on legal/court document filing fees to pay attorney fees and court costs for indigent wards/conservatees.

Property Tax Levies - Set aside a percentage of property taxes to pay attorney fees and court costs for indigent wards/conservatees.

State and County General Revenue Funds - Dedicate a budget line-item to reimburse attorney fees and court costs for indigent wards/conservatees.

### ***Potential Funding Sources***

Appropriate Needed Capital to Establish an Independent or Incorporated Public Guardianship Office - Initially appropriate approximately \$8,478,263 to \$8,770,831 per year, at today's costs, in order to support either an independent or an incorporated public guardianship office.

The higher dollar amount of \$8,770,831 per year, at today's costs, could initially support an office consisting of 108 FTE employees. This figure would include covering the start-up costs for personnel compensation, benefits and administrative office overhead expenses. This estimated cost would roughly translate into \$2,265.20 annually or \$188.80 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048 an employee-based model of an independent or incorporated office of public guardianship with 12.5 FTE staff supporting 404 state wards/public conservatees would cost \$915,138, at today's costs, less inflation and cost-of-living increases.

The lower dollar amount of \$8,478,263 per year, at today's costs, could initially support an office comprised of 48 FTE employees with the purpose of managing and quality monitoring about \$4,646,400 per year of subcontracted public guardianship legal representative and support services. This figure would include covering the costs for personnel compensation, benefits, administrative office overhead expenses and contract dollar expenditures to subcontracted entities carrying out the public guardianship services and functions. This estimated cost would roughly translate into \$2,189.64 annually or \$182.47 monthly per state ward/public conservatee for public guardianship/conservatorship legal representative services and support. This annual estimated cost principle would depreciate year over year at a rate of approximately 4.6 percent due to projected relative attrition. By 2048 an employee-contract paradigm of an independent or incorporated office of public guardianship with 6.5 FTE staff supporting 404 state wards/public conservatees would cost \$884,612, at today's costs, less inflation and cost-of-living increases.

Appropriate State Public Guardianship/Conservatorship Grants For Counties and Private Entities - Use a request for proposals grant program whereby the state via the Public Guardianship Office contracts and distributes "seed-capital" grant money directly for paid legal representation services (i.e., professional, corporate, etc.) and as incentive stipends to cover the expenses for private unpaid parties (i.e., family, friends, interested

others, etc.) willing and able to act as legal representatives for state wards/public conservatees. Again, the dollar amount of the entire grant fund could be approximately \$4,765,590, the approximate cumulative sum of estimated total discharge costs combined with projected fees for one year of continued legal representative services plus ongoing monitoring, training and development.

*Expand Medical Assistance (MA) Reimbursable Services to Include Legal Representation Costs and Fees in order to Meet MA Requirements of Informed Consent on Behalf of Incompetent or Incapacitated People* - This option would require amendments to the state MA plan and relevant state MA waiver programs. This option could include that any future MA waiver money dedicated to pilot or demonstration projects be partially used to fund public guardianship/conservatorship alternative initiatives. This option would only impact state wards/public conservatees who are MA eligible.

*Other Federal and State Benefit Programs* - A significant but untried funding source may be to pursue reimbursement of guardianship, conservatorship and other forms of legal representation services via federal and state public benefit programs. An example would be to utilize Medicaid funds for targeted case management which the state would match.

## CONCLUSION

---

There is a need for substitute decision-makers for vulnerable adults from all populations as the number of vulnerable and incapacitated adults increases each year with our aging population. The need for standardization of functions of substitute decision makers is becoming apparent as reports of exploitation, abuse, neglect and other forms of maltreatment of vulnerable adults increase. Many of the 3,872 adults with mental retardation who are currently under the guardianship/conservatorship of the Commissioner of Human Services will continue to need substitute decision makers well into the 21<sup>st</sup> century. Minnesota needs to determine how less restrictive legal representation alternatives within an array of legal representative services can and will be implemented and supported.

State laws that allow for guardianship and conservatorship must provide fiscal appropriations to permit quality services, including adequate funding, staffing and resource support for an Office of Public Guardianship. Presently, the state's expenditure for the Public Guardianship Office is approximately \$43,610 per year and the aggregate cost burden to the counties to perform public guardianship functions is estimated at approximately \$4,646,400 per year. Since 1989, the Legislature has appropriated only \$100,000 to seek alternatives to public guardianship/conservatorship services. Regardless of the approach adopted to transfer guardianship and conservatorship from the Commissioner of DHS, on-going funding from the Legislature is required. Regardless of which approach is adopted to transfer guardianship and conservatorship from the Commissioner, the following outcomes need to be achieved:

1. Elimination of public guardianship/conservatorship with increased capacity for less restrictive and less intrusive private-sector alternatives of paid and unpaid legal representation.
2. Legally authorized representatives act within an established quality assurance framework (e.g., best-practice performance standards and ethical rules or codes of conduct) which help assure that they and other service providers support persons in achieving their desired outcomes and meeting their health and safety needs.
3. Decisions and consents made by substitute decision makers that are:
  - Are free from conflict of interest
  - Made close to the person and within a relationship-based model where the legal representative is familiar with the person
  - Made with the active participation of the person
  - Reflect the person's needs, wants, desires, and preferences
  - Preserve the person's civil rights and liberties so they are not restricted beyond a clearly established need.

## **ACKNOWLEDGMENTS**

---

The Department of Human Services and the Public Guardianship Office gratefully thank the Minnesota Disability Law Center, ARC of Minnesota, ARC of Hennepin County, ARC of Ramsey County, Arc of Anoka County, ARC of Dakota County, Advocating Change Together, Minnesota Association of Guardianship & Conservatorship, Lutheran Social Services, Catholic Charities, Jewish Family & Children Services, Minnesota Council on Disabilities, Ombudsman's Office for Mental Health, Mental Retardation and Developmental Disabilities, Minnesota Department of Human Rights. Attorney General's Office, Hennepin County, Anoka County, Dakota County, Ramsey County, St. Louis County and Rancelow (Bill) Zuber for their thoughtful analysis and input regarding this report. Please refer to the attached appendix #4 for submitted comments and position statements. In addition, thank you to current and predecessor colleagues, whose work has significantly supported the Public Guardianship Office and this report.

## REFERENCES

---

***Public Guardianship Alternatives Project: Governors Recommendations***, August 1998, Minnesota Department of Human Services, Public Guardianship Office.

***Public Guardianship: Annual Status Report and Recommendations for Reform***, July 1998, Minnesota Department of Human Services, Public Guardianship Office.

***Proposed Legislative Amendments to Guardianship Statute, MS §525.539 to 525.71***, August 1997, Minnesota Department of Human Services, Public Guardianship Office.

***Uniform Guardianship and Protective Proceedings Act Proposal***, July 1997, National Conference of Commissioners on Uniform State Laws.

***Public Guardianship Alternatives Concept Paper***, January 1997, Minnesota Department of Human Services, Public Guardianship Office.

***Certification, Education, and Board of Review for Professional Conservators and Guardians in Minnesota***, February 1995, Minnesota Association for Guardianship and Conservatorship (MAGiC), and the Minnesota Department of Human Services, Public Guardianship Office.

***Indigent Fees Survey Summary Report***, October 1994, Minnesota Association for Guardianship and Conservatorship (MAGiC).

***Skilled Volunteer Project Report***, June 1993, Minnesota Department of Human Services, Public Guardianship Office

***Report to the Legislature on Alternatives to Public Guardianship and an Independent Office of Public Guardianship***, April 1993, Minnesota Department of Human Services, Public Guardianship Office.

***Steps to Enhance Guardianship Monitoring***, 1991, American Bar Association.

***Guardianship: An Agenda for Reform***, 1989, American Bar Association.

***Report to the Legislature: Public Guardianship Study***, January 1986, Minnesota Department of Human Services, Public Guardianship Office.

**PUBLIC GUARDIANSHIP TRANSFER  
RECOMMENDATION REPORT**

**APPENDICES**





**PUBLIC GUARDIANSHIP TRANSFER  
RECOMMENDATION REPORT**

**APPENDIX 1: ESTIMATED COST & EXPENSE ITEMIZATIONS**



## APPENDIX 1: ESTIMATED COST AND EXPENSE ITEMIZATIONS

### Independent/Incorporated Public Guardianship Office Employee-Based Model (Staffing, Compensation, Benefits & Administrative Office Overhead Expenditures)

#### Cost Estimates

1. Public Guardian/Conservator Caseworkers with caseloads of 43 State Wards/Public Conservatees.  
*\*90 positions*
  - Salary = **\$40,695**
  - Benefit Costs = **\$10,175**
  - Administrative Office Overhead Expense = **\$28,590**Subtotal Cost **\$79,460** (x 90 positions) =  
Total Cost **\$7,151,400**
  
2. Public Guardianship Unit Managers or Supervisors  
*\*9 positions*
  - Salary = **\$60,301**
  - Benefit Costs = **\$15,075**
  - Administrative Office Overhead Expense = **\$32,645**Subtotal Cost **\$108,021** (x 9 positions) =  
Total Cost **\$972,189**
  
3. Public Guardianship Director  
*\*1 position*
  - Salary = **\$72,078**
  - Benefit Costs = **\$18,025**
  - Administrative Office Overhead Expense = **\$32,645**Sub/total Cost **\$122,748** (x 1 position)
  
4. I.T. Specialist #3-Professional  
*\*1 position*
  - Salary = **\$48,700**
  - Benefit Costs = **\$12,175**
  - Administrative Office Overhead Expense = **\$28,590**Sub/total Cost **\$89,465** (x 1 position)
  
5. Executive Office Administrative Secretary  
*\*1 position*
  - Salary = **\$31,664**
  - Benefit Costs = **\$7,925**
  - Administrative Office Overhead Expense = **\$27,915**Subtotal Cost **\$67,504** (x 1 position)

6. Secretary/Clerical Support Professionals

*\*6 positions*

- Compensation = **\$26,664**
- Benefit Costs = **\$6,675**
- Administrative Office Overhead Expense = **\$27,915**

Subtotal Cost **\$61, 254** (x 6 positions) =

Total Cost **\$367,524**

- **Aggregate Cumulative Total Cost Estimate = \$8,770,830 per year, initially, at today's costs, for supporting a 108 FTE employee public guardianship office, yielding an expenditure of \$2,265 per year or \$188.80 per month for each of the estimated 3,872 state wards/public conservatees.**

**Independent/Incorporated Public Guardianship Office**  
**with Sub-Contracting Capacity**  
*(Staffing, Compensation, Benefits, Administrative Office Overhead  
and Sub-Contract Expenditures)*

**Cost Estimates**

1. Public Guardianship/Conservatorship Consultants monitoring the quality of services and support for a caseload of 107 State Wards/Public Conservatees.  
*\*36 positions*
  - Salary = **\$40,695**
  - Benefit Costs = **\$10,175**
  - Administrative Office Overhead Expenses = **\$28,590**Subtotal Cost **\$79,460** (x 36 positions) =  
Total Cost **\$2,860,560**
  
2. Public Guardianship Unit Managers or Supervisors  
*\*3 positions*
  - Salary = **\$60,301**
  - Benefit Cost = **\$15,075**
  - Administrative Office Overhead Expenses = **\$32,645**Subtotal Cost **\$108,021** (x 3 positions) =  
Total Cost **\$324,063**
  
3. Public Guardianship Director  
*\*1 position*
  - Salary = **\$72,078**
  - Benefit Costs = **\$18,025**
  - Administrative Office Overhead Expenses = **\$32,645**Sub/total Cost **\$122,748** (x 1 position)
  
4. I.T. Specialist  
*\*1 position*
  - Salary = **\$48,700**
  - Benefit Costs = **\$12,175**
  - Administrative Office Overhead Expenses = **\$28,590**Sub/total Cost **\$89,465** (x 1 position)
  
5. Executive Office Administrative Secretary  
*\*1 position*
  - Salary = **\$31,664**
  - Benefit Costs = **\$7,925**
  - Administrative Office Overhead Expenses = **\$27,915**Sub/total Cost **\$67,504** (x 1 position)

6. Secretary/Clerical Support Professionals

*\*6 positions*

- Compensation = **\$26,664**
- Benefit Costs = **\$6,675**
- Administrative Office Overhead Expenses = **\$27,915**

Subtotal Cost **\$61,254** (x 6 positions) =

Total Cost **\$367,524**

7. Contract Dollar Amount = **\$4,646,400 per year**, initially, at today's costs, for On going Legal Representation & Support Services.

- **Aggregate Cumulative Total Cost Estimate = \$8,478,264 per year, initially, at today's costs, for supporting a 47 FTE employee public guardianship office with contract capacity, yielding an expenditure of \$2,189.64 per year or @ \$182.47 per month for each of the estimated 3,872 state wards/public conservatees.**

**Current State Expenditure For  
The Public Guardianship Office**

Salary = **\$46,904**

Benefit Costs = **\$11,726**

Administrative Office Overhead Expense = **\$28,590**

Subtotal Cost **\$87,220** (x .5 FTE) =

Total Cost **\$43,610**

**Estimated County Cost or Expense  
For Public Guardianship Functions**

**\$4,646,400** per year aggregate expenditure across all counties for on-going legal representation services and support.





**PUBLIC GUARDIANSHIP TRANSFER  
RECOMMENDATION REPORT**

**APPENDIX 2: \*SIMPLE AMORTIZATION SCHEDULE OF  
EXPENDITURE DEPRECIATION AND POPULATION REDUCTION  
UNDER PROPOSED OFFICE AND PRESENT SYSTEM MODELS OF  
PUBLIC GUARDIANSHIP**

**(\*At today's costs, less inflation)**



**APPENDIX 2: AMORTIZATION SCHEDULE**

<b>Year</b>	<b>Recipients</b>	<b>Reduction in Recipients</b>	<b>Public Guardianship Office - Employee Model</b>	<b>Public Guardianship Office - Subcontracting Model</b>	<b>Present Public Guardianship Office and System Model</b>
<b>Recipient Cost Under Each Model</b>			<b>\$ 2265.20</b>	<b>\$ 2189.64</b>	<b>\$ 1211.26</b>
2000	3872	<b>*4.6% attrition &amp; depreciation</b>	\$ 8,770,831	\$ 8,478,263	\$ 4,690,010
2001	3694	178	\$ 8,367,627	\$ 8,088,508	\$ 4,474,406
2002	3524	170	\$ 7,982,544	\$ 7,716,270	\$ 4,268,491
2003	3362	162	\$ 7,615,582	\$ 7,361,550	\$ 4,072,266
2004	3207	155	\$ 7,264,477	\$ 7,022,156	\$ 3,884,520
2005	3059	148	\$ 6,929,228	\$ 6,698,090	\$ 3,705,254
2006	2918	141	\$ 6,609,836	\$ 6,389,352	\$ 3,534,465
2007	2784	134	\$ 6,306,300	\$ 6,095,941	\$ 3,372,156
2008	2656	128	\$ 6,016,355	\$ 5,815,668	\$ 3,217,115
2009	2534	122	\$ 5,740,002	\$ 5,548,533	\$ 3,069,340
2010	2417	117	\$ 5,474,974	\$ 5,292,345	\$ 2,927,623
2011	2306	111	\$ 5,223,537	\$ 5,049,296	\$ 2,793,172
2012	2200	106	\$ 4,983,427	\$ 4,817,195	\$ 2,664,779
2013	2099	101	\$ 4,754,642	\$ 4,596,042	\$ 2,542,441
2014	2002	97	\$ 4,534,918	\$ 4,383,647	\$ 2,424,949
2015	1910	92	\$ 4,326,521	\$ 4,182,201	\$ 2,313,512
2016	1822	88	\$ 4,127,183	\$ 3,989,513	\$ 2,206,921
2017	1738	84	\$ 3,936,907	\$ 3,805,584	\$ 2,105,175
2018	1658	80	\$ 3,755,692	\$ 3,630,413	\$ 2,008,274
2019	1582	76	\$ 3,583,537	\$ 3,464,001	\$ 1,916,218
2020	1509	73	\$ 3,418,178	\$ 3,304,158	\$ 1,827,796

<b>Year</b>	<b>Recipients</b>	<b>Reduction in Recipients</b>	<b>Public Guardianship Office - Employee Model</b>	<b>Public Guardianship Office - Subcontracting Model</b>	<b>Present Public Guardianship Office and System Model</b>
2021	1440	69	\$ 3,261,879	\$ 3,153,073	\$ 1,744,219
2022	1374	66	\$ 3,112,377	\$ 3,008,557	\$ 1,664,275
2023	1311	63	\$ 2,969,669	\$ 2,870,610	\$ 1,587,966
2024	1251	60	\$ 2,833,758	\$ 2,739,232	\$ 1,515,290
2025	1193	58	\$ 2,702,376	\$ 2,612,233	\$ 1,445,037
2026	1138	55	\$ 2,577,791	\$ 2,491,803	\$ 1,378,417
2027	1086	52	\$ 2,460,001	\$ 2,377,943	\$ 1,315,432
2028	1036	50	\$ 2,346,741	\$ 2,268,461	\$ 1,254,868
2029	988	48	\$ 2,238,012	\$ 2,163,358	\$ 1,196,728
2030	943	45	\$ 2,136,078	\$ 2,064,825	\$ 1,142,221
2031	900	43	\$ 2,038,675	\$ 1,970,671	\$ 1,090,137
2032	859	41	\$ 1,945,802	\$ 1,880,896	\$ 1,040,475
2033	819	40	\$ 1,855,194	\$ 1,793,310	\$ 992,024
2034	781	38	\$ 1,769,117	\$ 1,710,104	\$ 945,996
2035	745	36	\$ 1,687,570	\$ 1,631,277	\$ 902,391
2036	711	34	\$ 1,610,553	\$ 1,556,830	\$ 861,208
2037	678	33	\$ 1,535,802	\$ 1,484,572	\$ 821,236
2038	647	31	\$ 1,465,581	\$ 1,416,693	\$ 783,687
2039	617	30	\$ 1,397,625	\$ 1,351,004	\$ 747,349
2040	589	28	\$ 1,334,199	\$ 1,289,694	\$ 713,434
2041	562	27	\$ 1,273,039	\$ 1,230,574	\$ 680,730
2042	536	26	\$ 1,214,144	\$ 1,173,644	\$ 649,237
2043	511	25	\$ 1,157,514	\$ 1,118,903	\$ 618,955

<b>Year</b>	<b>Recipients</b>	<b>Reduction in Recipients</b>	<b>Public Guardianship Office - Employee Model</b>	<b>Public Guardianship Office - Subcontracting Model</b>	<b>Present Public Guardianship Office and System Model</b>
2044	487	24	\$ 1,103,149	\$ 1,066,352	\$ 589,885
2045	465	22	\$ 1,053,315	\$ 1,018,180	\$ 563,237
2046	444	21	\$ 1,005,746	\$ 972,197	\$ 537,801
2047	424	20	\$ 960,442	\$ 928,405	\$ 513,576
2048	404	20	\$ 915,138	\$ 884,612	\$ 489,350



**PUBLIC GUARDIANSHIP TRANSFER  
RECOMMENDATION REPORT**

**APPENDIX 3: DEFINITIONS/GLOSSARY**





### **APPENDIX 3: DEFINITIONS/GLOSSARY**

Understanding the jargon or terms and phrases used in guardianship and conservatorship proceedings is very helpful in understanding the process involved. The glossary provided here is limited but will provide the basic terms used in the legal and court activity surrounding the establishment of a guardianship or conservatorship.

#### ***General Legal Terms***

##### **Affidavit**

A sworn statement.

##### **Affiant**

The person who makes an affidavit.

##### **Appeal**

To bring a case before a higher court to review a decision of a lower court.

##### **Bond**

A promise by a bonding company that protects the conservatee (ward) from mismanagement by the conservator (guardian) of the estate. In the event of such mismanagement, the court may decide that the bond will reimburse the estate for the missing money, and the company that issued the bond can recoup the money from the conservator (guardian).

##### **Burden of Proof**

Duty of a party to prove a fact. The amount of proof required varies with the type of case. In guardianship and conservatorship matters, the burden of proof is **clear and convincing evidence**.

##### **Change of Venue**

To move the court matter to another county.

##### **Civil Lawsuit**

A legal action brought to obtain relief for injuries or monetary loss.

##### **Contested**

When any party objects to the petition or to the hearing, the matter is contested.

##### **Constitutional Rights**

Rights guaranteed by the Federal or State Constitution.

##### **Continuance**

When the court has agreed to postpone the hearing date.

##### **Estate**

A person's income, assets, real estate, or any other financial holdings all encompass an estate.

**Evidence**

Evidence is documentation, material, or testimony presented during a legal proceeding which are used to prove the claims made in a petition or legal action are facts.

**Fiduciary**

A "fiduciary" is a person who holds something in trust for another. The person has a special relation of trust, confidence, or responsibility in his or her obligation to another, such as a trustee or executor.

**Hearing**

A hearing is court proceeding presided over by a judge or referee to "hear" the petition that has been filed with the court and evidence presented at the hearing. Based on the hearing, the judge makes findings of fact, conclusions of law, and makes an order based on both.

**Indigent**

A person with little money or property.

**Informed Consent**

The principle that consent is valid only if the person giving the consent completely comprehends or understands the full nature and extent of the issue or matter, including the benefits, risks, costs, advantages and disadvantages of each alternative, and can present a reason for selecting a particular option.

**Least Restrictive/Least Intrusive**

A minimal amount and most normalized form of necessary and sufficient control, supervision, structure, intervention and protection that is imposed on some one based upon need and limiting exposure to reasonable harm of self and others.

**Legal Representative**

Refers to any suitable, willing and competent adult party, who has been either appointed through court order or accepted designation of a will or testamentary declaration or agreed to the assignment by administrative ruling to act in an official or legal standing capacity to render substitute judgements, surrogate management, voluntary informed consents and best-interest decisions on behalf of another person within the scope of their authority.

**Litigation**

Litigation is a trial and associated proceedings. A litigant is a party to a lawsuit.

**Notarize**

Process where an authorized public officer (the **notary**) verifies the signature on a document. The signature must take place in the presence of the notary.

**Oath**

A sworn promise to perform and act faithfully and truthfully.

**Order**

The order is the mandate, or the final decision by the court.

**Order to Show Cause**

An order requiring a party to appear and show why a previous order has not been complied with, or why a proposed order should not be made.

**Petition**

A legal document requesting action or relief from the court.

**Petitioner**

The person who brings a petition before the court.

**Pro Se Litigant**

A party who acts as his or her own attorney.

**Referee**

A judicial officer who is appointed by a judge. A referee is able to preside over matters as a judicial officer, and recommends decisions or orders, which are signed, or ordered, by a judge.

**Standing**

When a person has a legal right to raise an issue.

**Subpoena**

An order compelling a witness to appear and testify before a court.

**Substitute Judgement**

A standard of surrogate decision-making where consents, decisions and/or courses of action are based upon how some one would have decided upon the issue or matter had they had the capability or capacity to do so. This standard relies on historical observations of previously demonstrated informed choices, preferences, needs, desires, wishes, values, and beliefs.

**Testimony**

Oral statements made under oath at a legal proceeding.

**Venue**

County in which legal proceeding is held.

**Witness**

- (1) A person called to testify in a legal proceeding.
- (2) A person who witnesses the signing of a legal document.

## ***Guardianship/Conservatorship Legal Terms***

### **Appraisal**

If there is to be a sale of items listed in the inventory, formal appraisal is necessary.

### **Bill of Particulars**

A written document requested by a proposed ward or conservatee or court prior to the guardianship or conservatorships hearing. This document must be provided by the petitioner within ten days of the request or prior to the hearing, whichever is sooner. The bill of particulars includes specific factual information which the petitioner believes supports the need for appointment of guardian or conservator.

### **Conservator/Guardian**

A **conservator** or **guardian** is someone appointed by the court to handle the affairs of an incapacitated (in the case of a **conservatorship**) or incompetent (in the case of a **guardianship**) person.

### **Co-Conservator/Co-Guardian**

When more than one person is appointed to serve as the decision maker. There is no limit in Minnesota statute on the number of co-conservators or co-guardians that can be appointed. However, having more than one conservator or guardian make decision making very complicated as each co-conservator (co-guardian) is required to sign any documents requiring the signature of the conservator (guardian).

### **Corporate Guardian/Conservator**

A small or large group of individuals who have incorporated for the purposes of providing guardianship or conservatorship services. The corporation is considered the guardian or conservator, not any one individual. A corporate guardian or conservator can be a non-profit or for-profit enterprise.

### **Conservatee/Ward**

The person for whom a guardian or conservator handles these affairs is called a **conservatee** (in a conservatorship) or **ward** (in a guardianship). Before an appointment is made, the person for whom appointment is sought is called a **proposed conservatee** or **proposed ward**.

### **Types of Conservatorships and Guardianships**

There are six types of conservatorships and guardianships:

- 1. Guardianship of estate**

This covers all matters of a person's finances, property, and real estate allowed by law.

- 2. Guardianship of person**

This covers all matters of a person's medical care, nutrition, clothing, shelter or residence, and safety allowed by law.

### **3. Guardianship of person and estate**

This covers all matters of a person's finances, property, real estate, medical care, nutrition, clothing, shelter or residence, and safety allowed by law.

### **4. Conservatorship of estate**

This covers some or all matters of a person's finances, property, and real estate to the extent of the powers granted by the court.

### **5. Conservatorship of person**

This covers some or all matters of a person's medical care, nutrition, clothing, shelter or residence, and safety to the extent of the powers granted by the court.

### **6. Conservatorship of person and estate**

This covers all some or all matters of a person's finances, property, real estate, medical care, nutrition, clothing, shelter or residence, and safety to the extent of the powers granted by the court.

### **General Conservatorship/General Guardianship**

This refers to the permanent appointment of a conservator (guardian), after the normal petitioning process has occurred; that is, a minimum of two weeks notice has been given to the proposed conservatee (ward) and their relatives. A general conservatorship (guardianship) ends only on the death of the conservatee (ward), on the restoration to capacity of the conservatee (ward), or if the court otherwise terminates the conservatorship (guardianship).

### **Guardian ad Litem**

A person appointed by the court to look after the interests of a minor or a person with a disability who is involved in litigation.

### **Incapacity**

According to Minnesota guardianship and conservatorship laws, incapacity, as it relates to personal decision making, means that the person is impaired and lacks sufficient understanding to make or communicate responsible personal decisions, and the person has demonstrated the inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety. Incapacity as it relates to the estate means the person is unable to manage the person's property and affairs effectively because of incapacity and the person has property which will be dissipated unless proper management is provided, or that funds are needed to care for the person. A person can only legally be "deemed" incapacitated through a court process. When a conservator is appointed, it means the conservatee is presumed to be incapacitated.

### **Incompetency**

Incompetence is a legal term and finding only. A person can only legally be deemed incompetent through a court process. When a guardian is appointed, it means the ward is presumed to be incompetent.

**In Forma Pauperis (IFP)**

Minnesota Statutes, section 563.01 states that the court may authorize conservatorship (guardianship) proceedings to proceed "in forma pauperis," or without payment of court costs for indigent people. Another law states that counties may be responsible for paying guardian, conservator, attorney, or health care professional fees to establish or maintain conservatorships (guardianships) for indigent persons.

**Inventory**

Within one month after being appointed, the conservator (guardian) must file with the court an initial inventory describing all of the assets of the conservatee (ward).

**Private Conservatorship/Guardianship**

When an individual person or persons is appointed by the court to serve as conservator (guardian), it is a private conservatorship (guardianship). Even if the conservator (guardian) is a professional or otherwise not previously known to the conservatee (ward), it is still a private conservatorship (guardianship).

**Professional Guardian/Conservator**

An individual who provides guardianship or conservatorship services to others for a fee (i.e., a person who acts as a guardian or conservator at the same time for two or more wards or conservatees who are not related to the guardian or conservator by familial lineage, marriage or adoption for compensation). The professional guardian/conservator may or may not be incorporated. The individual professional is named the guardian or conservator.

**Public Conservatorship/Guardianship**

A public conservatorship/guardianship, sometimes called state conservatorship/guardianship, is a procedure where the Commissioner of the Department of Human Services is appointed by the court. Although the Commissioner is the legal conservator/guardian, most of the day-to-day decision making is delegated to a social worker in the conservatee's/ward's home county.

**Special Conservatorship/Guardianship**

In emergency situations where, due to the time required to petition for a general conservatorship (guardianship), it is reasonably expected that the proposed conservatee's (ward's) personal safety or financial security will be in danger, a special conservatorship (guardianship) may be requested. In this instance, the requirement of providing a minimum of two weeks notice to the proposed conservatee (ward) and family members is waived. A special conservatorship (guardianship) is granted for a specific, usually short, duration.

**Substitute Decision Maker**

The person who is acting, either informally as a family member or friend, or formally, as a proxy, agent, guardian or conservator, on behalf of an incapacitated person in making relevant decisions regarding personal and medical issues and/or financial issues.

### **Voluntary Conservatorship**

If a person is competent and would like to choose someone to handle personal or estate matters, request may be made to the court for such appointment. There is no such thing as voluntary guardianship because the person asking for such help has to be competent, and a guardianship implies incompetence.





**PUBLIC GUARDIANSHIP TRANSFER  
RECOMMENDATION REPORT**

**APPENDIX 4: SUBMITTED STAKEHOLDER RESPONSES & POSITIONS**



#### **APPENDIX 4: SUBMITTED STAKEHOLDER RESPONSES & POSITIONS**

The draft looks very good. I would push for a stronger recommendation for one of the options since the legislators are usually in need of direction. I would lean toward the private provider option with caps on provider case load sizes and clear standards in the interest of avoiding the inherent conflict of interest if any state entity is involved.

The draft mentions that the only current requirement for case manager/guardianship separation of functions is for approval of aversive/deprivation plans. At one time there was a requirement for separation when doing waiver screenings. Has that been changed?

I would delete the reference to increasing CSSA funding and requiring that it be budgeted by the counties for guardianship services. That would be contrary to current practice of counties allocating CSSA grants in accord with local need and would generate resistance by county boards. It would be best to make a direct allocation of funds to the counties (or a state purchasing agent) for guardianship services.

The recommendation for a guardianship plan and annual reporting to the court should be clearly restricted to professional guardians since it would tend to be a disincentive if applies to relatives or private volunteers.

A little understood issue about removing guardianship from the case manager is that it increases the work load of the case manager! This is because the guardians require the time of the case manager to become and stay informed, because the independent guardian is likely to seek more services than a busy case manager might have time to consider and because there is considerable more time required for the additional coordination between the various parties. The committee therefor might well consider recommending a cap on case manager case loads in addition to the cap on guardianship caseloads.

Ranslow Zuber



Melody Bialke  
Developmental Disabilities Planning Specialist  
Ramsey County Human Services  
160 E. Kellogg Blvd.  
St. Paul, MN 55101-1494

Dean Ritzman, Public Guardianship Administrator  
Department of Human Services  
2284 Highcrest Road  
Roseville, MN 55113

Subject: Public Comments on MN Session Law 429, section 2: Preliminary Draft of the Required Report of Recommendations from the Commissioner of DHS on the transferring of Public Guardianship

Dear Mr. Ritzman:

Thank you for the opportunity to respond to the draft report. Obviously there is not easy solution to eliminating the conflict of interest that currently exists for individuals under Public Guardianship. Please consider the following in your deliberations:

- 1 Overall, this is an expensive and complicated endeavor but I don't necessarily know of a better way to do it.
- 2 There is no mention of how future referrals would be handled. The recommendation (page 35) is that public guardianship would no longer be an option for people by statute and law and that current recipients would transfer to another public or private entity. Who picks up the cost of people needing this service in the future? Some counties, such as Ramsey have, in the past, funded the cost of private guardianship. All counties are saying they cannot afford to continue or start this. Ramsey is faced with not being able to sustain our current status quo and face a possible 30 percent increase in costs. Current trends indicating a decrease in public guardianship/conservatorship through attrition of 4.6 percent annually are based on trends prior to the current tax levy crunches.
- 3 Page 36 talks about requiring "minimal education, training and development criteria for all guardians and conservators, public, private, professional, corporate, family, interested party, etc." This seems pretty intrusive to require a family member/parent to comply with as well as others. Also, it doesn't address who would administer this if it applies to all and who would pay for it.
- 4 Page 37 talks about establishing "statutory caps for the number of guardianship or conservatorship cases private-sector corporate guardianship organizations and professional conservatorship businesses can retain." This will increase costs accordingly.

There will be several individuals from Ramsey County at the November 20<sup>th</sup> meeting at DHS, myself included. We look forward to discussing the report at that meeting.

Sincerely,

Melody Bialke  
Ramsey County Human Services  
Developmental Disabilities Planning Specialist

**From:** Anne Henry, Minnesota Disability Law Center  
**Sent:** Tuesday, November 07, 2000 4:11 PM  
**To:** Ritzman, Dean  
**Subject:** Draft Report

Hi Dean,

I was unable to download all the report, although with technical assistance I believe I got most of the text, just no charts. I would like a hard copy of the full report.

I have some comments for your consideration:

1. The report is very long and well beyond what the legislation calls for. In fact, the legislation doesn't require a report at all, but legislation or legislative recommendations. While I think the information you assembled is helpful to folks like me, I strongly urge that the legislature be given what they asked for: recommendations for transferring public guardianship to 1) a multi-purpose agency or 2) a new or existing state office with no operational or financial duties over DD services.
2. I think you have the recommendations specified. I recommend that they be described clearly at the beginning of a summary of the recommendations. I identified two options: a. Eliminate PG as we know it and replace with a publicly funded, privately operated system at xxx\$ per person per month from xyz funding sources and b. Move PG out of current location at DHS to 1. independent status ( like what other entities?), 2. another state agency (name options) or 3. elsewhere in DHS (describe where) with funding estimates for each option. These options could be presented in terms of a multi-purpose private agency or other location in state government. I don't believe anywhere in DHS complies with the legislation, but the Department may have a different view.
3. I believe you also rely on 3 necessary actions whatever changes the legislature may make: A. Fund adequately, B. Transfer/Discharge Initiative and C. Establish standards, training, monitoring and evaluation of PG services.
4. For background, you could briefly summarize the other reports' recommendations, give a brief summary of the history, including a chart of the number of public wards by age over 10 or 15 years and list the problems with the current arrangement.

5. Legislators always like to understand what other states do for the same need. More specifics should be included or in an appendix (a chart would suffice with funding included).

6. Describe the MA funding possibilities. This option is alluded to and dropped. This is a very potent opportunity, especially if other states use of MA is described.

I hope these comments are helpful. Call if you have any questions. Thanks for your work on this sadly neglected duty of the Commissioner's for some of Minnesota's most vulnerable citizens.



**To:** Dean Ritzman, Public Guardianship Administrator  
Department of Human Services

**From:** Bunny Husten, Manager Elderly Services Section  
St. Louis County Social Services

**Date:** November 9, 2000

**Subject:** TRANSFER OF PUBLIC GUARDIANSHIP

St. Louis County Social Service and County Attorney staff have reviewed the Report to the Legislature and the Recommendations on Public Guardianship Statues. Under this proposal the state would assume the direct responsibilities for the provision of public guardianship and related activities associated with the Vulnerable Adults Act. The St. Louis County Social Service Department supports this modification in order to make the public guardianship program consistent statewide and free of conflict of interest. As an unfunded mandate, the state take over would mean less county expenditures in this program for both the Social Service and Attorney departments.

With the change in the public guardianship delivery, the customer service focus is a critical area to be considered. In St. Louis County the guardianship role is separated from that of the case managers to avoid conflict of interest. Our recommendation is to have the new system be site-based and relationship oriented to insure quality of service through consistent and direct contact with the customer. The procedure in this county is to review any alternatives available for the guardianship and to access all possible income sources for the person. There is also a 24 hour/ 7 day per week access to the guardianship staff or supervisors to deal with issues such as medical emergencies. These are the overriding considerations for the modification of the program and the draft material seems to reflect most of these topics.

The county costs of the current activity versus the state projected costs are very difficult to compare. Perhaps the change to state direction would be more expensive but it would result in state wide consistency for this population. This agency supports the identification of a stable non property based funding source for public guardianship.

Please contact me at 218-262-6048 if you have questions on this material or would like additional input.

Bunny Husten  
St. Louis County Social Service Department  
2543 E. Beltline  
Hibbing, MN. 55746-2302

## Response of MAGiC to DHS Report of 12-15-00

Minnesota Association for Guardianship and Conservatorship (MAGiC) is an association of guardians/conservators, attorneys, social workers, long-term care and housing providers, court personnel and others actively involved in the area of guardianship/conservatorship and substitute decision-making alternatives. MAGiC welcomes the opportunity to provide input on the issue of discharge of public guardianships.

DHS correctly identifies the long-standing conflict of interest issues that are prevalent under the current public guardianship system. MAGiC is in agreement with the concept of a public discharge initiative. MAGiC does, however, oppose DHS's recommendation as to how to solve the problem. DHS's proposal to establish another state office, whether "independent" or as a division of another state agency, at a cost of almost \$9 million per year establishes yet another bureaucratic agency that will still not eliminate the conflict of interest that exists when the government serves as both the guardian and the provider of case management services for the ward. The benefit of an independent state office realized by public wards will not be sufficient to justify the \$9 million cost/year.

Transferring guardianship duties to a multi-purpose agency that provides a broad range of social service suffers from the same conflict of interest as the state experiences —the guardian's role has the potential for being influenced by the other services the agency can offer to the ward. One solution that will eliminate the conflict issue is the transfer of the guardian role to a entity that is truly independent of the government, such as the ward's family, a private guardian/conservator or an agency (non-profit or otherwise) that is able to eliminate the potential for conflicts of interest.

MAGiC recognizes that the ability to fund a discharge initiative and the ongoing services needed to continue the guardianship in the future is a major issue. Any initiative that encourages family to undertake the role of guardian will require training, education, and legal representation, with resulting costs. The inadequate funding of guardianships and conservatorships for other indigent conservatees, such as the elderly and the mentally ill, is already squeezing the court budgets and affecting the quality and availability of conservatorship services to those adults who are just as vulnerable and as deserving of services as public wards with developmental disabilities. The non-profit agencies that have contracted with counties to provide guardianship services to incapacitated vulnerable adults, professional guardians/conservators, and their legal counsel who serve them are similarly affected by the lack of funding for guardianship/conservatorship services for the population of non-public wards. Funding the services needed to accomplish the discharge and maintain quality of services for the ward/conservatee is a necessary component to a sound discharge initiative.

MAGiC suggests that it is time to consider alternative proposals to meet the substitute decision-making needs of the developmentally disabled, as well as the needs of all vulnerable and indigent persons. A discussion should focus on new and better solutions to the problems raised. The solutions need to include ways to encourage families (with proper education and assistance) to take on the duties of guardian. Recognizing that not all wards have families to provide this support, there needs to be a solution that allows for independent and cost-effective substitute decision-making for wards without family support. We are confident that by bringing all relevant parties to the table —DHS, the courts, ARC, MAGiC, social service agencies, the Ombudsman's office, the county case managers and the Attorney General, to name a few — solutions can be developed to address the substitute decision-making needs of indigent Minnesotans. Once long-term solutions are reached, the process of legislative changes and requests for adequate funding can be pursued.

Respectfully submitted,  
Mary Watson

**Report to the Legislature on Public Guardianship Meeting  
11/20/2000**

People present: Lynn McDonald-Ramsey ARC, Ann Henry-MN Disability Law Center, Anita Raymond-VOA Senior Resources, Karl Bushmaker-Magic, Melody Bialke-Ramsey County, Jackie Meyer-Ramsey County, Bill Zuber, Bob Brick-MN ARC, Tom Jolicouer-Hennepin County, Dan Steinhagen - Magic

**Advocates**

- Produce an executive summary that just delineates the recommendation options.
- Put an investment in discharge is preferred.
- Billing MA and MA Waiver's where appropriate: subject matter for future research study and reports, especially now other state's utilize MA for guardianship and conservatorship.
- Contract and monitoring model for State Ward/Public Conservators.
- Need to discover all of the possible hidden sources/resources of funding to access for guardianship/conservatorship.
- Need a chart/graph/table for the analysis of the amorization of costs perhaps in an another appendix.

**Professional/Guardians**

- Existing fees for private guardians and conservators are not sufficient enough to cover legal representative costs.
- When you are a private guardian or a conservator you are only eligible for 5 percent of the recipients pay.
- Magic Journal published a chart on a breakdown of what each county would pay out to private conservators.
- No one wants to take indigent cases because they don't hardly pay anything and they can't make a living off these cases....also difficult to recover fees in current system.
- How can more dollars be captured?
- Private conservators would like more money.
- Judges are key people involved in guardianship cases and can help with private guardianship compensation and fee recovery for costs.

**Counties**

- What kind of training is out there for guardians before you take on a case?
- Leave out CSSA when relating to funding sources.
- Would like the State of MN to provide "pass-through" allocations to the counties so that they can subcontract public guardianship to outside private entities on a quasi-employee basis.
- Keep an entire state funded function some where else and subcontract out the bulk of the public guardianship duties and responsibilities.

- Multi-purpose social/human service agencies outside the state as an option could pose problems when taking on a guardianship/conservatorship function, especially for those they serve.
- State could function with office that oversees contracts and monitors these cases
- Would like to contract out so that the caseloads lessen for the Case Managers, again, in a quasi-employee manner.
- Ramsey County Social Services - DD Division engages in a subcontract practice, outside of their county attorney's office, with a prescribed group of vendor private attorneys and law firms which arrange and conduct the establishment of their guardianships/conservatorships with private parties or enterprises in an effort to divert incapacitated or incompetent people with M.R. away from public guardianship or public conservatorship system. They use CSSA dollars to fund these endeavors, but the money is running-out. They expressed that they probably spend more than the report estimated costs/expenses.