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**REPORT TO THE LEGISLATURE**

**ON ALTERNATIVES TO PUBLIC GUARDIANSHIP**

**AND**

**AN INDEPENDENT OFFICE OF PUBLIC GUARDIANSHIP**

**APRIL 15, 1993**

**submitted by:**

**THE DEPARTMENT OF HUMAN SERVICES**

**DIVISION FOR PERSONS WITH DEVELOPMENTAL  
DISABILITIES**

**GUARDIANSHIP UNIT**



**Public Guardianship Study**

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AND AN INDEPENDENT OFFICE OF PUBLIC GUARDIANSHIP**

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## I. EXECUTIVE SUMMARY

### CHARGE TO THE DEPARTMENT

The 1992 Session Laws of Minnesota and Chapter <sup>459</sup> 465, required the Department of Human Services to submit a report to the Legislature in 1993, with recommendations in the following two areas:

1. Alternative proposals for providing services to public wards; and
2. The establishment of an independent public guardianship office.

This report is the result of a compilation of literature in the field of guardianship, practices and standards in Minnesota and the nation. It also includes a summary of the progress made on the 1986 Public Guardianship Report to the Legislature. The Department of Human Services elected to establish a task force of professionals and advocates in the field of services to persons with mental retardation and guardianship and conservatorship services to serve as an advisory committee to the Commissioner on this report; their input and recommendations are included.

### DEFINITIONS

There are many field-related definitions for guardianship which can often be confusing; and can often have different meanings from state to state for the same exact word. "Guardianship" means, essentially, that all but the most basic civil rights have been given to the legal representative, the guardian. "Guardianship" in Minnesota can be of the person or estate. Minnesota also has a limited guardianship call a "conservatorship." "Conservatorship" can be of the person or of the estate. "Least restrictive alternative" is a legal and policy term used to describe the least intrusive, most normalized, course of action which best meets the needs of the ward. "Best interest" is a Minnesota legal term which describes a decision-making process which weighs the potential benefits and potential risks to a ward and considers the ward's wishes in the process. "Informed consent" means the principle that consent is valid only if certain standards for receiving consent apply.

### HISTORY

Minnesota began its services to persons with mental retardation in 1917 by providing a combination of services and legal decision-making or guardianship. In 1985, the Minnesota

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Legislature mandated a study of public guardianship. The report recommended significant changes to the public guardianship system including better funding, separation of public guardianship from case management, improved resources for state department for public guardianship, standards for public and private guardians, training for public and private guardians, creation of an independent office of public guardian, a centralized monitoring system for all guardianships, and a funding subsidy for near-relatives and "friendly others" for reimbursement of expenses only.

### **CURRENT MINNESOTA PRACTICES**

The Minnesota adult public guardianship system is available only to persons with mental retardation. The adult public guardianship system does not serve all those who need service and does not always serve those wards who are receiving public guardianship in a manner that ensures wards best interest decision-making. Minnesota's public guardianship system operates under a system in which the county case manager, is required by law to design the service delivery plan and allocate financial resources for that client plan, and usually the same individual who acts as the legal representative for consent to the plan. Attempts by the Department to separate that function while allowing the county social services to continue to deliver guardianship services have been met with limited success. There are currently 5,200 adult public wards being served in 86 counties.

In Minnesota, private guardianships are usually preferred over public guardianships because they are generally more personalized, are more responsive to client preferences, and protect client rights better than public guardianships. However, private guardianship services generally lack sufficient monetary support to meet the needs of people without personal estates. Frequently, a private guardian is forced to seek the discharge of the guardianship when estate monies are no longer available because there is no other viable funding source for guardianship services. Many vulnerable adults go without best interest decisions made on their behalf due to the lack of a guardian. Furthermore, family members are experiencing difficulties being bonded as private guardians of estates as bonding agencies have found family members to be high risk candidates.

### **CURRENT NATIONAL PRACTICES**

It is nationally accepted practice that public guardianship is the most restrictive guardianship and is the guardianship of last resort. It is also accepted nationally, that family and friends are the first acceptable option for guardianship and that a non-family member, non-professional, often called a "friendly guardian," is the next best option. Private professional guardians are the next level of least restrictive alternative. Corporations are the last least restrictive option before utilizing the public sector to act as guardian. The basis for this

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rationale is that the private sector is typically more able to give personalized service to wards which protect client rights more thoroughly and with less conflict of interest than the public sector.

Most states with large public guardianship programs have problems with increasing clients and decreasing funds. Most states with public guardianship programs are also often subject to political influence. In contrast, states with no public guardianship programs often have problems with unserved clientele. Almost all public guardianship programs are funded through state funds, local funds, and/or client estates. Some state programs use volunteers.

Many states, including Minnesota, have professional guardians working part-time as guardians. Typically, private guardianship services, like public guardianship services, lack financial support, which means that many clients are unserved or guardians are very limited in what they can actually accomplish for wards. In 1985, Minnesota was found to be the only Midwest Region V state which did not have a corporate guardianship system statewide. Corporations were found to be a compromise between the use of less effective and expensive massive public guardianship programs and scarce and unorganized private professional guardians. Corporations were found to provide an effective guardianship service, at a reasonable cost, to large groups of vulnerable adults.

### **1992 TASK FORCE INPUT**

The Department organized a twenty-eight member task force to discuss the issue of alternatives to public guardianship and the feasibility of an independent guardianship office. There were four meetings held to discuss the topic and surrounding issues. Those meetings were held in August through November of 1992. See appendix for member listing.

All of the twenty-eight member task force agreed that reform was essential for public guardianship. There was unanimous agreement that use of the public guardianship office would be the option of last resort. All agreed that independence and freedom from outside influence was essential. There was unanimous agreement that monitoring and mandatory standards are needed. All agreed that adequate financial support for all guardianship systems is essential. Only three representatives disagreed with the concept of an independent office of public guardian.

### **POTENTIAL FUNDING MECHANISMS**

Nationally, funding for public and private guardianship services is accomplished in diverse ways. Client fees are used in most states. Local and state appropriations are used in

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most states. Medicaid funds are used in some states. Many states use philanthropic foundations, volunteers, and inkind to support guardianship services. Several states use surcharges on civil suit filing fees.

### **TASK FORCE RECOMMENDATIONS TO THE DEPARTMENT OF HUMAN SERVICES**

The 1992 Guardianship Task Force recommends that extensive alternatives to public guardianship be created, funded, and/or enhanced; and recommends the creation of a two-purpose office of state guardianship which is independent of a service delivery function, service eligibility authorization, or other functions that may present potential conflicts of interest.

As an integral part of separating the functions of public guardianship from the state and county, while creating an independent office of state guardianship, a significant reduction of the 5,280 public wards is recommended. Specifically, it is recommended that 4,000 to 5,000 wards be discharged to less restrictive alternatives. Only the most complex of cases rejected by the private sector should be retained by the state guardianship office. This transfer should occur over the course of approximately five years. There will be a fiscal cost to this transfer, which would be difficult to estimate at this time. It is possible to reduce the cost of the establishment of a typical individual guardianship by contracting with specific legal firms to handle the legal activities required for a transfer. The transfer itself will be complicated. Eighty-six counties would be involved with this transfer. The successor guardian or guardians would have to get to know over 5,000 wards individually.

The Task Force recommended that an independent state guardianship office be created and would have the following responsibilities:

- Provide extensive training and technical assistance to public and private guardians;
- Maintain a central registry for all guardians and conservators;
- Coordinate with other agencies for background checks and screening of all potential guardians and conservators;
- Include a mechanism to expose potential abuses against private or public wards or conservatees; and
- Administer a reimbursement mechanism for "friendly" guardians or conservators which would include a small monthly stipend to non-professionals for reimbursement while acting as guardian or conservator for a small number of clients (e.g., five or less).

The Task Force further recommends that public guardianship services should utilize volunteers as many corporations in Minnesota do. The use of volunteers is expected to lower

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costs and provide more personalized services. However, the use of volunteers will require additional system coordination, administration, and training. It is also recommended that the independent office of public guardianship be placed in an organizational and political structure which minimizes conflict of interest and minimizes potential political influence. Occasionally it is recommended that public guardianship be combined with an ombudsman function. The ombudsman's function in Minnesota for persons with developmental disabilities has a very different role. Their role is to investigate those who are violating the rights of vulnerable adults. There is potential for the Ombudsman's Office to investigate the actions of the public guardian and as such creates a worse conflict of interest than that the Department faces currently.

The Task Force recommended that additional funding be obtained through federal sources such as Medicaid allocations, state allocations, surcharge on filing fees on civil suits; and through the use of other public agency funding as identified. The exact costs are difficult to project, but nationally for similarly large guardianship programs, costs run from \$1,000 to \$1,300 per year, per ward.

Considerable statutory change would be required to create an independent office of public guardianship. The Task Force recommends that statutory language be created in the following areas:

- All private and public guardians or conservators should be required to abide by minimal training standards and be certified.
- All private and public guardians or conservators should be required to abide by standards, including best-interest decision making.
- Public guardianship services should be expanded to include populations other than only persons with mental retardation.
- The actual public guardianship service should be provided to a statutory cap of statewide clients of preferably no more than 500 to 1,000 clients. The small number is recommended for administrative ease and to continue to promote public guardianship as the guardianship of last resort. The statutorily limited cap on the number of clients should not be expanded.
- There should be a statutorily mandated case load size of no more than 75 clients per staff acting as public guardian. This limitation is needed in particular since unlike other types of social services, there are no "inactive" or "active" clients. People continue to need informed consent for their entire life.

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### **DEPARTMENT OF HUMAN SERVICES RECOMMENDATIONS TO THE 1993 LEGISLATURE**

The Department of Human Services understands and is fully aware of the goals and obstacles to guardianship reform. In general, the Department supports the long term directions outlined by the Task Force. However, the Department recognizes that the State's current fiscal limitation and the unknown costs of the recommended reforms. The Department would suggest the following as a first step toward long term improvement:

- \* The Department recommends that an advisory group be convened to develop a plan for a two-year pilot project for contracting for adult public guardianship. The standards of the adopted public guardianship rule, Minnesota Rule Parts 9525.3010 to 9525.3100 shall apply to the pilot.



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### **II. INTRODUCTION**

#### **CHARGE TO THE 1985 TASK FORCE**

Laws of Minnesota 1992, Chapter 465, required the Minnesota Department of Human Services to provide a report to the Legislature on Public Guardianship, under Minnesota Statutes, Chapter 252A, The Mental Retardation Protection Act, also known as Adult Public Guardianship. The Legislature required the Department of Human Services to make recommendations on January 15, 1993, on the following two areas:

1. To recommend alternative proposals for providing services to public wards; and
2. To make recommendations on the establishment of an independent public guardianship office.

The Department of Human Services elected to establish a task force of professionals and advocates in the field of services to persons with mental retardation and guardianship and conservatorship services to advise the Commissioner in the development of this report.

#### **BACKGROUND AND HISTORY**

The purpose of guardianship and conservatorship is to ensure that appropriate decisions are made on behalf of a person who is unable to make decisions independently. The critical factor is that the potential ward or conservatee must be unable to make responsible decisions. In Minnesota, a guardian is an individual, organization, or a state agency appointed by a court and given authority to make decisions on behalf of a person found by the court to be legally incompetent. A ward is a person for whom a guardian has been appointed by the court. Full guardianship signifies a legal finding of incompetence and substantially limits the civil rights of the individual.

In Minnesota, conservatorship is a limited form of guardianship. While a conservatorship does limit some specified civil rights, it does not denote total legal incompetence. By definition, conservatorship is less restrictive and as a matter of law, must always be considered prior to the establishment of a full guardianship. Specifically, a conservatorship restricts only those portions of the rights as stated in the court-ordered letters of conservatorship. A conservatorship does not abridge a person's fundamental civil right to vote.

In 1917, the Minnesota Legislature passed law which established the first state mandate to provide services to persons with mental retardation. It provided for guardianship services which included the components of supervision, protection, and habilitation. The purpose of guardianship and conservatorship is to ensure that appropriate decisions are made on behalf of

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a person who is unable to make decisions independently. The Department of Human Services currently serves as public guardian for 5,280 adults with mental retardation. The bulk of the public guardianship requirements are carried out by the county social services agencies. Only a few of the most controversial consent determinations are carried out by the State Department.

In 1970, the Minnesota Legislature passed Minnesota Statutes, Chapter 252A, known as the Mental Retardation Protection Act. This act separated the provision of services to persons with mental retardation and guardianship services from state facility commitment. In 1983, the provision of services to persons with mental retardation was separated from guardianship by Minnesota Statutes, section 256B.092, which specified mandated services.

There have been a number of revisions to Chapter 252A since its original passage. The most significant changes to the act occurred recently in the 1987 legislative session, when its name was changed to the Public Guardianship for Adults with Mental Retardation Act. These amendments specifically excluded children under the age of eighteen and further clarified that public guardianship is the most restrictive form of guardianship. Rulemaking authority was also further defined at this time.

In 1986, the Legislature required a task force and report to the Legislature on public guardianship. It further required an explanation of who public guardianship applied to and also required a recommendation on expansion to other populations. The 1986 Public Guardianship Study indicated that family and friends are the least restrictive alternative. The next level of restrictiveness is a professional guardian. The third level of restrictiveness is a corporation acting as guardian. The fourth and most restrictive level is the government acting as guardian.

In 1989, the Legislature appropriated approximately \$100,000 to seek alternative guardianships for adults under public guardianship. The Department of Human Services completed that "Discharge Initiative" discharging almost 500 clients. The Department of Human Services trained numerous attorneys and private parties in guardianship topics and published a report to the Legislature detailing those accomplishments.

## **METHODOLOGY**

The plan to complete the 1992 Minnesota legislative requirement was developed in mid-1992 and included the following:

1. To review and study the 1986 Public Guardianship Study. The current study reviews the goals and objectives submitted to the Legislature seven years ago. This included an assessment and evaluation of goals completed to-date. This task force also assessed and evaluated the uncompleted goals.

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- 2. To survey organizational and legal structures nationally and to identify methods to utilize in Minnesota.**

The current study attempts to identify funding sources used by other states. The current study attempts to research existing statutory and organizational structures used by other states for public and private guardianships. An evaluation of the use of licensing, certification, or registration was attempted. National experts were brought to Minnesota to provide technical assistance to the task force.

- 3. To survey policy and practice standards nationally and identify methods to utilize in Minnesota.**

The current study reviewed existing national standards and existing state standards. Monitoring, training, competencies, and screening required for guardians were researched from other states.

- 4. To hold four task force meetings.**

The Department held four task force meetings to obtain input from the private sector, including attorneys, probate judges, guardians, advocates, as well as the public sector. The task force developed a list of obstacles and goals for alternatives to public guardianship and the creation of an independent office of public guardianship.

- 5. To identify funding sources**

The task force and the Department were aware that funding would pose a significant barrier to the development of adequate guardianship programs. The Department sought input from other states which are successfully funding less restrictive guardianship programs. This report includes recommendations for the development of mechanisms in Minnesota to fund guardianship programs.

- 6. To complete a Legislative recommendation on guardianship**

This report synthesized all material and makes recommendations on alternatives to public guardianship and an independent office of public guardianship.

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### III. DEFINITIONS

Definitions: The following definitions, as edited for the purposes of task force use, were recommended by the rules advisory committee formed to assist the Department in the development of rules which will govern public guardianship services.

#### Best interest.

"Best interest" means the principle of decision-making which weighs the benefits and harms to the ward of a particular act or course of action, based on reasonable alternatives, and selects the alternative which provides most benefit and least harm. For the purposes of (the public guardianship) rule, an act or course of action is reasonable if it is the least intrusive and most normalizing action possible, given the needs of the ward. The ward's desires and objectives shall be weighed when determining a reasonable act or course of action.

#### Conservatee.

"Conservatee" means a person for whom the court has appointed a conservator.

#### Conservator.

"Conservator" means the person appointed by the court when exercising some, but not all the powers designated in Minnesota Statutes, section 525.56.

#### Corporate guardian.

"Corporate guardian" or "corporate conservator" means 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, not any one individual. A corporate guardian can be non-profit or for-profit.

#### Guardian.

"Guardian" means the person appointed by the court when exercising all of the powers designated in Minnesota Statutes, section 525.56.

#### Informed consent.

"Informed consent" means the principle that the consent is valid only if the person giving consent understands the nature of the treatment, including the benefits, the risk of harm to the ward, the alternatives and can give a reason for selecting a particular alternative. Informed consent requires the following:

- a. The person giving consent is able to receive and assimilate relevant information.

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- b. The person giving consent has the capacity to make reasoned decisions based upon relevant information.
- c. The consent is given voluntarily and without coercion.
- d. The person giving consent understands the nature of the diagnosis, the prognosis, and the current clinical condition.
- e. The person giving consent understands the risk of harm to the ward and the benefits of all treatment alternatives including risks and benefits of no treatment.

### Least restrictive alternative.

"Least restrictive alternative" means the alternative which is the least intrusive and most normalized given the level required for each individual ward. This level of supervision and protection should allow risk taking to an extent that there is no reasonable likelihood that serious harm will happen to the person or others.

### Professional guardian.

"Professional guardian" or "professional conservator" means a single individual who provides guardianship or conservatorship services for a fee. The professional may or may not be incorporated. The individual professional is the named guardian. The professional may be full-time or part-time.

### Public guardian and public conservator.

"Public guardian or conservator" means the Commissioner of Human Services when appointed by the court when exercising all or some of the powers designated in Minnesota Statutes, section 252A.111.

### Public ward or public conservatee.

"Public ward or public conservatee" means a person with mental retardation for whom the court has appointed the Commissioner of Human Services to act as guardian or conservator.

### Ward.

"Ward" means a person for whom the court has appointed a guardian.

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### **IV. HISTORY: SUMMARY OF 1986 PUBLIC GUARDIANSHIP STUDY**

In 1985, the Minnesota Legislature authorized the Department of Human Services to evaluate the current status of public guardianship in Minnesota and to recommend changes. The 1986 Public Guardianship Study was developed by gathering input from contemporary leaders in the field of services for persons with mental retardation and guardianship. The 1986 Public Guardianship Study consisted of three research components a literature review, a national survey of guardianship systems, and a survey of Minnesota public guardianship services.

#### **THE CHARGE TO THE 1985 TASK FORCE WAS TO ESTABLISH:**

1. The number of persons under public guardianship and their place of residence.
2. The amount of staff resources available to perform the role of public guardian.
3. The duties of the county case manager acting as public guardian.
4. The types of disabilities of persons under public guardianship.
5. The feasibility and economic impact of extending public guardianship to persons with disabilities other than mental retardation (e.g., persons with a mental illness, persons who are elderly, and persons with chemical dependencies).

#### **THE FINDINGS OF THE 1986 PUBLIC GUARDIANSHIP STUDY INCLUDED:**

1. The number of public wards and their place of residence:

In 1986, there were approximately 6,800 adults with mental retardation under public guardianship in Minnesota. No other population was, or is currently, accepted under the Minnesota adult public guardianship system. Approximately, fifty percent of the counties were responsible for 40 or fewer wards. Fifteen percent of the counties had more than 80 wards. The majority of adults with mental retardation living in state operated regional treatment centers (state hospitals) were public wards. Most of the remaining adult wards lived in community-based Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR).

2. Staff resources to provide services to public wards:

In 1986, the Department of Human Services provided one professional staff person to monitor public wards. Two-thirds of Minnesota counties had two or

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fewer staff to perform guardianship duties. Survey results found that the average time spent in guardianship duties on behalf of an average of 40 wards by social workers was slightly more than eight hours per week -- 12 minutes per week per ward. The average annual county cost of performing guardianship functions was estimated by the counties at \$5,745 per ward.

### 3. Duties of the county case manager acting as public guardian:

The 1986 task force found that the county case manager was inappropriate to act as guardian due to a conflict of interest. The county case manager is responsible to assess for individual needs and to design a service delivery plan which meets the persons needs within the county's allocation of resources. The guardian is the party which is responsible to the probate court to assure that the service delivery plan is in the best interest of the ward. The guardian is then responsible to make a final consent determination apart from any undue conflict of interest.

### 4. Successful guardianship models in other states in 1985:

Three states in the 1986 national guardianship survey were offered as successful models for serving adults of differing populations:

- a) **Wisconsin:** The State of Wisconsin provided a subsidy for a number of non-profit corporations providing guardianship. The annual cost per corporation was \$25,000. The clients also contributed part of their estate money for the services. The local corporation interviewed, served 44 people under full guardianship and 24 under limited forms of guardianship. Wisconsin also provided a small subsidy to private individuals to act as private guardians.
- b) **Illinois:** The State of Illinois public guardianship system served more than 3,600 indigent adults representing all disabilities at an annual cost of \$2 million.
- c) **Maine:** The State of Maine provided a public, state-run guardianship program for about 700 wards at an annual cost of \$100,000.

### 5. 1985 National survey results:

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The 1986 national survey of guardianship services revealed that three basic systems of guardianship existed: public, corporate, and private. Private guardianship was provided either by near-relatives or a "friendly other." The populations most often served were persons who are elderly and persons with developmental disabilities. Annual figures on budget, staffing, and number of wards evaluated for the public state-run models revealed a mean of 2,025 wards at a mean cost of \$711 per ward. The mean number of staff was thirteen full time equivalents. Without Minnesota computed in the averages, the mean number of wards was 1,236, at a mean cost of \$828.50 budgeted per ward. In fiscal year 1985, Minnesota budgeted seven dollars per ward per year for approximately 6,800 wards.

### 6. The 1985 Minnesota survey results:

The 1986 survey regarding Minnesota guardianship services, revealed that Minnesota was the only Region V state with no corporate model operating statewide. The two most frequently noted suggestions for improving guardianship in Minnesota were specifying clearly the duties of the guardian and adding training for guardianship activities. It was also found that costs for establishing private guardianship in Minnesota ranged from \$300 to \$700 per client.

## THE 1986 PUBLIC GUARDIANSHIP STUDY INCLUDED THE FOLLOWING RECOMMENDATIONS:

### 1986 General Recommendations

- a. All guardianship systems should have a clearly defined purpose, benefits, and responsibilities, and legal implications should be clearly outlined.
- b. All clients under guardianship should be assured of accountability, protective services, and quality care in decisions made by the guardian.
- c. Clients should be assured the least restrictive alternative in rights restriction and in decision-making.
- d. Education and technical assistance should be made available to the public, especially near-relatives, social service personnel, advocates, public school personnel and the probate court.



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- e. Conflicts of interest or unlawful decision-making by unauthorized parties should be avoided. Providers should not make decisions for clients unable to make their own decisions without legal sanction.
- f. State laws providing guardianship must provide fiscal appropriations to permit quality services.
- g. More stringent monitoring and visitation regulations should be required.
- h. Legal and technical assistance to the county social services agencies on guardianship alternatives should be provided.

### **1986 Public Guardianship Recommendations:**

- a. The 1986 task force concluded that the present system of public guardianship is not amenable to expansion to other populations without reform and adequate funding.
- b. An adequately funded and staffed independent office of public guardianship should be created. The current public guardianship system should be restructured to include regional personnel with support services. These regional personnel would assume the role in providing decision-making now made by the counties.
- c. Current statute should be revised and a rule adopted for creating and implementing standards and quality assurance mechanisms for public guardianship.
- d. Regardless of the extent of action on the proposed recommendations, the staff and budget of the DHS guardianship office should be expanded.
- e. Final responsibility in major decision-making in such areas as sterilization, "do not resuscitate" orders, refusal of treatment, changes in guardianship status, and protection of abused wards should be retained by the state office.

### **1986 Private Guardianship Recommendations**

- a. Funding for near-relatives who cannot afford the cost of initial guardianship proceedings for private guardianship should be provided.

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- b. A centralized monitoring system for all private guardianships (near-relative and corporations) should be established and implemented by a state agency.**
- c. A mechanism should be developed, creating a non-profit corporate guardianship system to provide for low-income clients with no near-relatives.**
- d. All local corporations should be mandated to institute training, monitoring, and service provision requirements.**
- e. Partial public funding for corporate guardianship should be provided.**

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### **V. CURRENT MINNESOTA PRACTICES**

#### **PROGRESS ON 1986 RECOMMENDATIONS**

The Department of Human Services attempted to implement recommendations of the 1986 Public Guardianship Study. The following accomplishments outline the progress on those recommendations:

##### **General Recommendations:**

###### **1. Education:**

In 1988 to 1989, the Department of Human Services provided a small grant and assisted in technical assistance, mailing, and copying costs, in order to assist in the development of a state professional association for guardianship and conservatorship. This state professional association known as Minnesota Association for Guardianship and Conservatorship (MAGiC), has provided technical assistance and training in guardianship topics to the public and private sector. The goals of MAGiC are consistent with those of the 1986 Public Guardianship Study recommendations to provide education. MAGiC has provided an annual two day conference usually granting approximately eight to ten Continuing Education Credits for attorneys, social workers, nurses, nursing home administrators, and teachers. MAGiC has also provided intermittent workshops and lectures and plans to expand this area. The Department of Human Services has continued to provide technical assistance on an ongoing basis to MAGiC.

###### **2. Legal and technical assistance on guardianship alternatives:**

In 1989 to 1991, the Department of Human Services provided a two-year technical assistance project which provided training to private parties and families on seeking less restrictive alternatives than public guardianship. Numerous private parties were trained during this time. Approximately 500 discharges from public guardianship were completed, which is approximately twice the usual frequency. Discharges from public guardianship continue to be requested at an accelerated rate.

The Department of Human Services also provided a two-year technical assistance and training program to attorneys practicing in the guardianship and

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conservatorship area. Several hundred public and private attorneys were trained during this time.

3. **Guardianship systems should have a clearly-defined purpose. All persons under guardianship should be assured of accountability, protective services, and quality care in decision made by the guardian:**

MAGiC, with technical assistance from the Department of Human Services, has established a set of standards by which its members are expected to abide by voluntarily. The standards parallel those proposed by the Department of Human Services under the Public Guardianship Rule.

### **Public Guardianship Recommendations**

1. **Legislation:**

In 1987, Minnesota Statutes, Chapter 252A, was significantly amended to incorporate all of the general guardianship law; Minnesota Statutes, sections 525.539 to 525.705. It was also revised to require standard setting in specific consent determination areas for public wards and conservatees.

2. **Rules:**

The Department of Human Services is currently in the process of promulgating rules which will establish standards to govern the provision of public guardianship. A public hearing on proposed Minnesota Rules, parts 9525.3010 to 9525.3100, was held on November 16, 1992. The philosophical underpinning of the proposed rule is based on the "best interest" standard and use of "informed consent." The rule is expected to be adopted by spring 1993.

3. **The staff and budget of the DHS guardianship office should be expanded:**

The Department of Human Services expanded the guardianship office during 1989 to 1991, to develop the discharge initiative and to provide training and technical assistance. However, budget cuts have reduced the unit to its original size of one professional staff.

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4. Major decision-making should be retained by the state office:

Major decision-making in such areas as sterilization, "do not resuscitate" orders, refusal of treatment, changes in guardianship status, and protection of abused wards has been retained by the state office in practice and is now standardized in proposed Minnesota Rules, parts 9525.3010 to 9525.3100.

### **Private Guardianship Recommendations**

1. Funding for near-relatives who cannot afford the cost of initial guardianship proceedings for private guardianship should be provided:

Minnesota Statutes, section 525.703, subdivision 2, provides that counties pay for the attorney fees in establishing a private guardianship or conservatorship for those client which are indigent. Minnesota Statutes, section 525.703, subdivision 3, also allows the court to order payment for guardianship fees.

2. A centralized monitoring system for all private guardianships (near-relative and corporations) should be established and implemented by a state agency:

The Department of Human Services is currently involved in a survey to clearly establish the geographic location and the experience of professionals practicing legal services for guardianship services and the geographic location and the experience of professionals practicing guardianship services in Minnesota. MAGiC is researching the feasibility of certifying guardians in Minnesota.

### **LAWS GOVERNING GUARDIANSHIP IN MINNESOTA:**

There are primarily two laws in Minnesota governing guardianship; the Adult Public Guardianship law and the general guardianship law often referred to as the private law.

1. General Guardianship -- Minnesota Statutes, sections 525.539 to 525.705:

This law governs guardianship and conservatorship in Minnesota including public guardianship. This law provides the basic definitions by which all guardianships in Minnesota must abide by including "best interest." The general law can apply to all populations and applies to both guardianship of persons and guardianship

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of estate. This law outlines the procedures for filing, services, petition, findings, and letters of guardianship and conservatorship. These sections outline the powers and duties of a guardian or conservator and applies to both the private guardian and the public guardian. This law outlines the procedures for discharge and modification.

### **2. Adult Public Guardianship -- Minnesota Statutes, Chapter 252A:**

Minnesota Statutes, Chapter 252A, governs only public guardianship and conservatorship of the Commissioner, commonly known as "state guardianship." The public guardianship law is only applicable to adult persons with mental retardation. This law provides for specific requirements for public guardianship above and beyond what is required in the general guardianship law. Chapter 252A goes beyond the general law in that the Commissioner is required to seek out those persons with mental retardation who need assistance and to advise them of the availability of assistance. A comprehensive evaluation consisting of a medical report, a psychological report, an assessment of individual service needs, and a description of contacts with near-relatives is required when petitioning the court for public guardianship. The public guardianship law clearly states that a private guardianship is less restrictive and preferred when appropriate and available.

## **BACKGROUND AND UPDATE ON PUBLIC GUARDIANSHIP SERVICES IN 1992:**

In Minnesota, public guardianship is administered through the Minnesota Department of Human Services. This law is applicable only to adults with mental retardation. Persons with related conditions without mental retardation such as mental illness or chemical dependency, children under 18 years of age, and the elderly without mental retardation are not provided public guardianship services under Chapter 252A. In most cases, the State Department does not actually perform these guardianship duties, but rather they are "delegated" to the county. In Minnesota, the counties act as "local guardian" or "delegated guardian" and are responsible for the majority of decision-making actions on behalf of a ward. For instance, the majority of individual consents determinations, such as place of residence or medical consents are delegated to the counties. However, there are certain consents which are not delegated and for which the state guardianship office retains responsibility, including life-ending decisions, research, electroconvulsive therapy, sterilization, experimental treatment and other consents involving life-threatening issues.

The form of substitute decision-making applied to each ward should be the least restrictive alternative appropriate for that individual. As stated earlier, public guardianship is generally considered to be the most restrictive form of substitute decision-making. Accordingly,

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as a matter of policy as well as law (Minnesota Statutes, section 252A.03, subdivision 4), private guardianship is preferred over public guardianship and is viewed as less restrictive in nature. To assure the selection of the least restrictive alternative, before a nomination for public guardianship is accepted, it must be documented that no private party is "willing or able" to act as private guardian.

In situations where the ward's family is not willing or able to fulfill the responsibilities of guardian, it should be noted that the ward's family must still be given the opportunity to be involved in planning and decision-making on behalf of the ward (Minnesota Statutes, section 252A.111). However, the Commissioner retains the final decision-making authority.

There are approximately 5,280 public wards under the Commissioner's authority to act as guardian (See Appendix #2, "Incidence of Public Wards and County of Residence"). Slightly under half of those wards live in the seven county metro area.

## BACKGROUND AND UPDATE ON PRIVATE GUARDIANSHIP IN 1992

In Minnesota, private guardianship is governed by Minnesota Statutes, sections 525.539 to 525.705, and is administered through the local probate courts. This law is applicable to anyone for whom the court orders the appointment of a guardian or conservator. Private guardianship and conservatorship in Minnesota is available to any population.

Since there is no central registry, it is difficult to identify who actually performs the services of private guardianship or conservatorship in Minnesota. Most county probate court records are not computerized. Consequently, it is difficult to determine incidence and county of residence. It is estimated that most of the private guardianships or conservatorships in Minnesota are primarily active in the area of finances and estate. It is further estimated that the majority of guardianships are for persons who are elderly, rather than other disabilities or populations.

Minnesota currently has a wide variety of options for guardianship and conservatorship in the private sector. The guardianship options are mainly divided into three categories. Many other states nationally do have either the legal capability or the practical ability to provide this wide array of options. The first category is family and friends. Family and friends are able to act as private guardian or conservator for persons needing a legal representative. The second category includes the professional guardian or conservator. There is an active group of guardians and conservators in Minnesota who are professional guardians. This group of professionals act as legal representative without benefit of a formalized organization such as a corporation. Often the professional guardian acts only on a part-time basis. Some professional guardians are employed full-time as guardians or conservators for their clients. The third major

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category of guardianship options in Minnesota is the corporation. Corporations in Minnesota are primarily non-profit. The corporation is the named guardian. The corporation employs professional staff to act as guardians. Often corporations will use volunteers to provide additional or required services.



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### **VI. NATIONAL PRACTICE**

#### **ALASKA**

There are currently 416 clients under public guardianship in Alaska. Public guardianship serves persons from any population. Approximately one-third of the clients are persons with developmental disabilities, one-third are persons with mental illness, and the other one-third are elderly.

The guardianship division staff includes six public guardians and two accounting staff. The program relies heavily on the use of volunteers. The program's annual budget is currently approximately \$500,000. Travel costs are extensive and the budget does not include training, attorney's fees for respondents or court visitor costs. The court visitor is the individual who investigates the case before it goes to hearing and makes a recommendation to the court regarding the guardianship petition.

The Alaska public guardianship program relies heavily on the use of volunteers many of which are on a short-term basis. The organization and administration of volunteers is time-consuming. Currently this includes five full-time and three part-time volunteers.

Caseload sizes outweigh resources. Caseload sizes have increased from 35 to 70. The program is considering caseload caps. The statute does allow for assessing a fee from clients. Also, the state could assess some of the clients' permanent funds by court order. The state is working on implementing a medicaid waiver for guardianship services. Alaska has no professional guardians.

#### **CALIFORNIA**

Public guardianship services are provided in California at the county level. In each of the 58 counties, there is a public guardian that often is, although not always, appointed by the Board of Supervisors. Guardianship is an optional service, although all counties provide some sort of program. Programs are housed in a variety of agencies, most commonly as part of the mental health department, the public administrators office, or the tax collectors office. About twelve public guardians are elected officials.

Services in California cover two broad groups: 1) probate conservatees, typically elderly people who have an inability to substantially provide food, shelter and clothing and or resist abuse or exploitation; and, 2) LPS conservatees (named after the legislator who authored the legislation -- Lanterman Protective Service), typically mental health or substance abuse clients, who meet the test of a danger to self and others.

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Most funding is from court approved client fees and local government. Services are funded through county appropriations and fees charged to non-indigent estates. Services can vary greatly from one county to another. Programs range in size from a few dozen wards in rural counties to over 3,000 wards in Los Angeles County. A typical urban program would handle several hundred wards.

A separate network of state-funded non-profit "Regional Centers" provide services to clients with developmental disabilities, and these frequently provide guardianship services to their clients. Under California law, "limited conservatorship" is available only to clients with developmental disabilities and does not require a finding of incompetence.

There are also several significant-sized (over 200 clients) non-profit programs in Los Angeles and San Francisco which provide guardianship services to moderate and low income individuals. These programs provide services using a sliding fee scale of hourly fees and subsidize services to indigent clients from this income. These agencies receive no public funding for this service. These non-government programs provide services using a ratio of roughly four to one paying to non-paying indigent clients.

## **FLORIDA AND ARIZONA**

Florida and Arizona have large private guardianship programs primarily for persons who are elderly. Training is required by statute in Florida. Most guardianship costs are private pay in both states. Florida has large non-profit guardianship providers. Arizona also has a large number of private guardianships due to the number of retirees. In contrast, however, Arizona's guardianship corporations are all for-profit.

## **ILLINOIS**

Illinois has two public models: the county public guardianship which serves persons who can private pay; and, the state public guardianship which serves persons who are indigent. Indigent, for Illinois state guardianship purposes, means that the clients have funds less than or equal to \$10,000. In Illinois, public guardians have large caseloads of approximately 150 wards. Illinois state guardianship serves approximately 8,000 clients of all populations. The Illinois budget is approximately \$3 million. In the 1986, Illinois had approximately 3,000 wards and a \$2 million dollar budget.

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### MICHIGAN

Michigan does not have a statewide public guardianship system. Instead, the state leaves the responsibility of providing services to the local county of jurisdiction. Therefore, three major types of programs were developed to meet the local needs. They are the county public program, the corporations including private for profit, private not-for-profit, and the volunteer programs.

Funding for each program is different. The public programs are funded within county budgets. The private programs rely heavily on the "entity of last resort" have alternative funding arranged through contracts with public and private agencies, grants or allocations from United Way and cash and in-kind donations. Volunteer programs are funded a variety of ways. The program could be a part of a county budget, receive grant funding from Department of Social Services for some other state agency or be a part of a local United Way allocation.

### MINNESOTA

Attorney fees for establishing private guardianship are approximately \$800 to \$1,000 state-wide. This fee includes the inventory, first year fees, and the initial court hearings.

Attorney fees after the first year run between \$150 to \$250 annually. The third year fees are again higher because a court hearing is required. Complex, contested, or controversial situations can cost considerably more. Guardianship services are more difficult to cost analyze due to the wide variety of services provided in Minnesota. Usually there is a per hour fee for services which generally range from \$25 to \$75 per hour depending on the client situation and the guardianship services provider.

Some corporations use volunteers to lower their costs and to provide more personalized services. Corporations which use volunteers vary greatly in how those volunteers are utilized. Some corporations use volunteers to cover required visitations and complete consent determinations. Others use volunteers for elective uses such as extra visits and to increase personalized services. Volunteers will often receive reimbursement for expenses such as mileage and meals. Such reimbursement generally ranges from \$6 to \$25 per month. In addition, some family members who act as guardian charge \$10 to \$15 per hour for expenses, while other families charge nothing.

The public sector in Minnesota is considerably different. Attorney fees for public guardianship have been absorbed by the County Attorney's Office, primarily in staff time.

Other types of public guardianship in Minnesota are Veteran's Administration public wards for United States veterans and county public wards. The county public wards are

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only for adults who by nature of their guardianship status could be considered a "vulnerable adult" as defined by the Minnesota Vulnerable Adult law. The county funds the guardianship services or acts as guardian for these wards. It is estimated that there are less than 100 of these guardianships statewide.

### **NEW HAMPSHIRE**

In New Hampshire, the state contracts for public guardianship services with an independent non-profit corporation. The contract is based on a dollar amount per client per day; as of April 1991, that charge was \$3.42 per client per day or \$1,248 per ward per year.

### **NEW MEXICO**

New Mexico provides guardianship services through a state contract with a state-wide non-profit agency. Funding is provided directly as a state appropriation to the State Agency on Aging, although clients served can include all adults who meet the income and asset levels. In addition, the non-profit program accepts private pay clients using a sliding fee scale.

Approximately, 650 clients are served statewide from four regional offices. The clients are approximately 55 percent elderly, 17 percent are persons with developmental disabilities, and 28 percent other (including mental health, organic injury, and substance abuse). Costs for state agency clients are capped at \$1,150 per person, based on charges of \$20 per hour for money management and \$40 per hour for case management.

### **NEW YORK**

The New York State ARC (formerly Association for Retarded Citizens) program operates a corporate guardianship program for persons with developmental disabilities. The not-for-profit program provides guardianship services through its 62 chapters. Currently, New York State ARC, Inc., has been appointed primary, standby and alternate standby guardian for 675 people with developmental disabilities.

New York also has established a pilot project surrogate decision-making committee. This unique Surrogate Decision-Making Committee Program has proven to be an effective mechanism for obtaining prompt major medical treatment on behalf of persons with mental disabilities who reside in residential programs separate or licensed by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities.

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The goal was to provide due process while providing for prompt medical treatment. The surrogate decision-making program was authorized on a demonstration basis in 1985 and is currently only in 15 of 62 counties. However, the Governor made the program permanent in 1990 with the expressed intent that it be expanded statewide. New York is currently the only state with such a program. The result of the committee's proceedings is a consent determination. Although the committee only addresses major medical concerns, the program provides for the protection of the person's best interest and autonomy. It is only for persons lacking capacity. The program is a quasi-judicial mechanism. Attorneys represent clients at the surrogate decision-making panel. The objective is to provide for an expeditious alternative to a court proceeding. The panel members are all volunteers.

The Commission has not experienced difficulties in recruiting volunteers; attorneys do pro bono work. There are currently about 160 volunteers serving a fourteen county area. The annual caseload is 400-600; 2) the total potential cases is 6,000; and, 3) the annual cost of the program is \$200,000. Fifteen of 62 counties are currently served by the program and it is soon to expand throughout the state. The current allocation for the program is \$150,000 annually. New York state law does not allow for temporary guardianships.

### **PENNSYLVANIA**

Pennsylvania utilizes federal Medicaid allocations for guardianship services and is currently receiving several million dollars for this program as "targeted case management." The state cost allocation plan allows a targeted case management including guardianship services for Medicaid eligible clients. In addition, the Area Agencies on Aging act as public guardian for elderly clients only.

### **TEXAS**

A draft bill establishing the Office of Public Guardian for the State of Texas was presented at public hearings and will be introduced during the legislative session. Under the proposal, a separate stand-alone agency will be created. The state-level will have no responsibility for direct service delivery; instead, it will pass-through funds to local programs. Funding will then be on a matching basis. Several areas in Texas, notably San Antonio, Houston and Dallas already have significant county public guardian programs. The new state program is planned to be supported by a \$10 increase in filing fees on all civil actions in Texas. Estimates put the potential revenue from this measure at \$5.5 million annually.

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### **WISCONSIN**

Wisconsin does not have a public guardianship system. However, Wisconsin does have approximately 26 state department approved non-profit corporations. In the past, Wisconsin had provided a \$250,000 subsidy to assist in the initial development for those corporations. Most corporations have a contract with the counties to provide services to indigent persons. Private pay for guardianship services is allowed with approval from the court. Wisconsin has a citizen non-relative guardian who acts as a volunteer guardian and gets stipend from the state of \$15 to \$25 per month for a small fee and expenses. Wisconsin has found that family members are the most frequently cited for abuses and conflict of interest for guardianship and that family guardians are poorly trained and poorly monitored.

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### **VII. 1992 TASK FORCE INPUT**

The 1992 Public Guardianship Task Force was formed to assist the Department of Human Services in the development of recommendations to the Legislature regarding alternatives to public guardianship and the formation of an independent office of guardianship. The 1992 task force was comprised of experts in the field of mental retardation and guardianship including professional guardians and conservators, attorneys and probate judges, advocates, and county and state guardianship personnel (See Appendix #2, "1992 Public Guardianship Task Force Membership List").

### **GOALS AND OBSTACLES**

The task force identified the following goals and obstacles to the development of alternatives to public guardianship and the formation of an independent office of public guardianship:

1. **Goals for Alternatives to Public Guardianship**
  - Establish sound standards
  - Avoid conflict of interest
  - Pursue guardianship legislation
  - Increase community input
  - Cultural diversity of entities providing guardianship
  - More individualized services
  - Best-interest decision-making
  - A sound transition plan
  - Adequate training for guardians, public and private
  - Adequate training for family member guardians
  - Development of a central registry for technical assistance
  - Establish incentives for family members to be guardians
  - Enhance private guardian initiative through some type of funding or financial assistance
  
2. **Obstacles to Alternatives to Public Guardianship:**
  - Adequate and stable funding
  - Establishment of new relationships; release of state and county control
  - Danger that by adding another office the system may become more complicated
  - The mechanics of transferring large numbers of persons will require a different system
  - Practical implications of private guardianship; e.g., attorney fees, financial burdens

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- Family members are not necessarily the best-suited to be the guardian in all cases
  - Concern over continuity of care with a corporate entity
3. **Goals for an Independent Office of Public Guardianship**
- Non-political supervision
  - Competent, well-trained staff
  - Independent of advocacy and investigative agencies
  - Philosophy consistent with the discharge initiative
  - Will serve all clients; particularly those who may not be accepted elsewhere due to required decision-making on difficult and controversial issues
  - Adequate and stable funding
  - Assistance with attorneys fees and understanding the court system
4. **Obstacles to Developing an Independent Office of Public Guardianship:**
- Determination of appropriate caseload size; guardians may be overwhelmed
  - Inadequate funding
  - Conflict of interest will not be totally eliminated
  - Could perpetuate incentives to keep public guardianship
  - Subject to legislative change
  - May create a whole new bureaucracy; must avoid institutionalization of the guardianship function
  - Funding is the primary barrier to the establishment of an independent office of guardianship

## **MEETINGS**

**Task force meetings:** Four task force meetings were held during the months of August through November. The following is an overview of the agendas and discussions of these meetings:

1. **Meeting Number One Agenda: (Permanent) Alternatives to Public Guardianship**
  - a. Overview of legislative requirements and work plan
  - b. Review of supportive materials
  - c. Review of 1986 public guardianship study
  - d. Goals and objectives for alternatives to public guardianship
  - e. Obstacles to alternatives to public guardianship
  - f. Permanent guardianship alternatives



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The first task force meeting consisted of a discussion of the following points: Funding would be an integral issue for this report. Transition for the wards must be addressed. Public guardianship needs to be expanded to other populations in addition to persons with developmental disabilities. There will always be a need for some form of public guardianship as a public safety net. There needs to be an alternative for those elderly disabled for whom governmental guardianship is not appropriate. There was some inquiry regarding using case management funds. Guardianship works best in its purest form when the case manager is a separate entity. The report must address the protection of the guardian from disgruntled family members. If private guardianship was supported financially, individuals would be equally well-suited to provide quality guardianship services. A corporate entity would be removed from the individual's care. The corporate model would have more resources to tap into with respect to expertise. Resources and expertise are often unavailable in greater Minnesota and some people will still need to remain in the state guardianship system. There may be a way of reallocating funds that have previously gone to counties for public guardianship services to use for private guardianships.

2. Meeting Number Two Agenda: (Temporary) Alternatives to Public Guardianship
  - a. Goals and objectives for alternatives to public guardianship.
  - b. Obstacles to alternatives to public guardianship.
  - c. Design of alternatives.
  - d. Temporary guardianships, committees, etc..
  - e. Guest speaker tentative New York system on surrogate decision making committee.

The following is an overview of the discussion held at the second task force meeting:

Two guest speakers presented an overview and discussion regarding New York State's Mental Hygiene Law Article 80--Surrogate Decision-Making for Medical Care and Treatment. The need for the program became evident in the 1970's with the Willowbrook case in which large numbers of the population of persons with mental disabilities were shown to be in need of surrogate decision-making for medical decisions. The average length of time required to obtain informed consent through a court proceeding before the enactment of the surrogate decision-making legislation was 57 days. The program provides for the protection of the person's best interest and autonomy. The Commission has no problem obtaining volunteers; attorneys do pro bono work. There are currently about 160 volunteers serving a 14 county area.

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The two criteria which must be met in order for the panel to proceed on a case are:

1. Lack of capacity to make the medical decision needed; and
2. Unavailability of an authorized surrogate to make a decision on the person's behalf.

The annual caseload is 400 to 600. The total potential cases is 6,000. The annual cost of the program is \$200,000. Fourteen of 62 counties are currently served by the program. Over the life of the program, panels have heard over 2,000 cases; 81 cases were withdrawn.

In the final analysis, most of the Minnesota task force members did not see relevancy in the New York decision-making model for Minnesota.

3. Meeting Number Three Agenda: Bicameral State Guardianship Office and the Public Guardianship Sections.
  - a. Design of bicameral state guardianship office.
  - b. Discuss Alternative Guardianships Unit of the state guardianship office which includes technical assistance, training, standards, monitoring, certification, investigations and background checks.
  - c. Discuss Public Guardianship Unit of the State Guardianship Office.
  - d. Guest speaker tentative Alaska public Guardianship system.
  - e. Discussion and Recommendations.

The following is a summary of the focus of the discussion at the third task force meeting:

- a. The Department provided a brief overview of a prototype model which serves persons who are indigent. This model includes an investigative unit with expertise distinct from the ombudsman and vulnerable adult functions. It was pointed out that a cap on caseload size would be helpful to avoid the problems that occurred in other states which had public guardianship systems with increasing clients and decreasing funds. The Department discussed the two branches of the independent office; the public unit and the alternatives unit. (See Appendix 3, "Prototype Guardianship Office.")

Concern was expressed about involvement in a private family guardianship even to the extent of a registry. The task force stressed the need to focus on persons who are left out of the current system and on guardians who

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are in a professional guardianship capacity. There were several task force members opposed to the idea of using Medical Assistance funding for guardianship. There were a number of suggestions for and against utilizing the Ombudsman's Office for Mental Health and Mental Retardation for guardianship services. There was a general consensus that the focus should be on the glaring problems and dealing with those rather than creating an entirely new system. There was also a general consensus among task force members that some form of a registry would be advisable. The task force indicated that it was important to identify and train guardians and that a central technical assistance model would be very beneficial. The task force stressed that statutory clarification is needed and identified problems including that probate law is very local in nature and that a central, generic technical assistance effort may be hindered by this fact.

b. Guest speaker: Dorcas Jackson, Chief Public Guardian-State of Alaska

(See section on "National Practice.") The authorizing legislation for the Alaska public guardianship system was passed in 1982. Prior to this legislation, there were only thirty wards under administration of the state. In the Alaska system, there are full and limited guardianships. Alaska differs from Minnesota in that in Alaska, conservatorships are solely financial.

Ms. Jackson identified the following two primary difficulties/limitations with the Alaska state guardianship program:

1. Caseload sizes outweigh resources. Caseload sizes have increased from 35 to 70. The program is considering caseload caps. Ms. Jackson feels there is a strong correlation between caseload size and quality of services. The statute does allow for assessing a fee from clients. Also, the state could assess some of the clients' permanent funds by court order. The state is considering doing a medicaid waiver for guardianship services.
2. Materials and manuals were not developed at the initiation of the program. The video explaining guardianship to family members should have been ready for use when the program started.

Ms. Jackson added that the state guardianship office is truly independent. For example, even though she is a state employee, she has sued the state facility in order to come up with a better placement for an individual. The authorizing statute specifically provides for the right to sue the state.

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### 4. Meeting Number Four Agenda:

This was the final meeting of the task force formed to assist the Department in developing recommendations to the Legislature regarding public guardianship. The focus of this meeting was to hear presentations by task force members on their specific recommendations for the content of the report to the Legislature. Presentations were made by the following members:

#### a. Arc

Arc Minnesota, Arc Ramsey, and Arc Suburban, collaborated in the development of their recommendations. Arc strongly urged the phasing out of all public guardianship by 1997. With regard to the formation of an independent office of public guardianship, Arc recommended that such an office should not be developed and that rather, the resources and effort should be devoted to seeking alternatives.

#### b. Private Conservators

These comments were primarily directed toward private guardians and the advantages and disadvantages of an independent office of public guardianship. The concerns included how the very difficult cases would be handled, particularly those involving difficult and controversial medical decisions.

Private guardians are paid on a private pay basis. For wards on Medical Assistance, the guardian receives five percent of the ward's income, up to \$100 per month. The private conservators responded that it is often a significant cost issue absorbing indigent clients and that, in essence, they end up doing a considerable amount of pro bono work. Private guardians supported an independent public guardianship office.

#### c. Anoka County

The Anoka County representative pointed out that while counties are supportive of a public guardianship concept, she doesn't feel that needs to mean that we create a business from it. She stressed that an expanded office needs to be totally independent of DHS. It was added that every year counties put more and more of their own dollars into social services and that it is important that funding for

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guardianship does not come from existing county programs. She added that local taxes can only support so much. The Anoka County representative noted that counties are willing to give up the provision of guardianship services.

### **d. Hennepin County**

The Hennepin County representative noted that being involved with a ward as a case manager and a public guardian is a very difficult position to be in. She agrees that counties do not want to see funds cut in other areas in order to fund guardianship.

The Hennepin County representative also inquired about the feasibility of doing some type of a pilot project. She noted that she does not believe there are going to be massive funds available for a change in the guardianship system. Another task force member discussed how Lutheran Social Services has taken over the provision of guardianship for Nicollet and Brown Counties over the past two years and that this could really be viewed as a pilot project of sorts. Under this relationship, Medical Assistance pays five percent and the counties involved pay the remaining costs. Counties are charged at a rate of \$30 per hour. The task force discussed looking at the data from these two counties. The Hennepin County representative noted the different situation with Hennepin County having 1,200 wards.

### **e. Lutheran Social Service**

The Lutheran Social Service representative noted that she does not feel the issue is one of corporate versus private providers. As a corporation, 90 percent plus of Lutheran Social Service's wards are indigent. Their services are funded through grants, etc. Rather, it is important that an RFP go out which results in obtaining a qualified guardian. She expressed concern that counties which have fulfilled the discharge initiative may have their funding affected. She stressed that, at the very least, we need to implement Rule 175 (proposed public guardianship rule) and that the worse scenario would be to retain the status quo with respect to guardianship services. They supported an independent office of public guardian.

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### **VIII. POTENTIAL FUNDING MECHANISMS**

No specific funding to-date has been appropriated by the Minnesota Legislature for Minnesota public guardianship services or for alternatives to public guardianship services. As has been identified by the task force and throughout this report, adequate funding is central to the provision of quality guardianship services and essential to the formation of an independent office of public guardianship.

Funding for private and public guardianship services nationally has primarily distributed among seven areas:

#### **CLIENT FEES**

Most states report the use of client fees. The guardian is paid through the use of client cash or client estate. Often, the non-indigent clients help to support the guardianship services for the indigent clients.

#### **LOCAL APPROPRIATIONS**

Most states report the use of local appropriations. The county is the entity funding the guardianship program with or without pass-through funds from the state.

#### **STATE APPROPRIATIONS**

Many states report the use of state appropriations. The states will often differ in the organizational use of the state appropriations, however, frequently states exhibit legislatively ordered state appropriations for guardianship services. Most states using state allocations have reported that their funding is seriously reduced during budget cutting times.

#### **FEDERAL APPROPRIATIONS**

A few states are now utilizing Medicaid funds to resource their guardianship programs. It is usually found under "targeted case management". It requires the state's cost allocation plan for reimbursement under Medicaid to be revised. It also means that the State must match the federal funds at an agreed upon ration. Often those medicaid eligible clients will get more than simply guardianship services.

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### **PHILANTHROPIC FOUNDATIONS**

A few states are using philanthropic foundations to fund guardianship services. For instance, United Way is utilized in Michigan.

### **VOLUNTEER SERVICES AND INKIND**

Many states use volunteers and accept inkind services to resource their guardianship programs. Alaska uses general volunteers and VISTA volunteers.

### **OTHER**

Some states use a surcharge on the civil suit filing fees to fund guardianship services.

Nationally, funding is a serious issue for guardianship services. Most programs serving indigent, or hard-to-serve wards consider themselves to be under-funded. It makes it difficult or nearly impossible to provide state of the art progressive guardianship services. Many states consider the lack of funding as a problem which prevents all clients who need guardianship service from obtaining guardianship services.

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### IX. TASK FORCE RECOMMENDATIONS TO THE DEPARTMENT OF HUMAN SERVICES

#### GENERAL RECOMMENDATIONS

Generally, the 1992 Guardianship Task Force recommends extensive alternatives to public guardianship be created, funded, and/or enhanced and an independent office of state guardianship be created. Significant statutory amendments will be required.

#### SPECIFIC PROGRAM RECOMMENDATIONS

The Task Force recommends that as an integral part of separating the functions of public guardianship from the state and county and creating an independent office of state guardianship, a **significant reduction of the 5,200 public wards**. No ward would be discharged without the establishment of a private guardian. It is specifically recommended that 4,000 to 5,000 wards be discharged to the private sector and only the most complex of cases rejected by the private sector, be retained by the state guardianship office. It is recommended that **this transfer occur over the course of approximately five years**.

The Task Force recommends that **extensive training and technical assistance** be provided to public and private guardians by the State Guardianship Office. A **central registry** for all guardians and conservators should be maintained by the State Guardianship Office. The State Guardianship Office should coordinate with other agencies for **background checks and screening of all potential guardians** and conservators to assure that guardians of the estate have not been convicted of theft of property and guardians of the person have not been convicted of any vulnerable adult or child abuse. The State Guardianship Office should contain an **investigative unit** for potential abuses against private or public wards or conservatees. The State should allocate a **reimbursement mechanism** for "friendly" guardians or conservators which would include a small monthly stipend to non-professionals for reimbursement while acting as guardian or conservator for a small number of client (e.g., five or less). All private and public guardians or conservators would be required to abide by recommended **statutorily required training requirements**. All private and public guardians or conservators should be required to abide by recommended **statutorily required standards** as adopted by rule. Monitoring of compliance with training requirements and standards and technical assistance should be provided.



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The Task Force recommends that the actual public guardianship service be provided to a statutory cap of statewide clients of no more than 500 to 1000 clients. Public guardianship services should be expanded to include populations other than just persons with mental retardation. The statutorily limited cap on the number of clients should not be expanded. There should be a statutorily mandated case load size of no more than seventy-five wards per staff acting as guardian. The Department recommends that the public guardianship services utilize volunteers, as many corporations in Minnesota do, to lower costs and provide more personalized services. Use of volunteers will require coordination, administration, and training. It is recommended that the independent office of public guardianship be placed in an organizational and political structure which will minimize conflict of interest and minimize potential political manipulation.

### SPECIFIC FUNDING RECOMMENDATIONS

The Task Force recommends the use of client fees to support the independent office of public guardianship. The Department supports the use of local matching funds for clients from specific local districts for public and private guardianships. The Department supports the use of state allocations for public and private guardianships. The Department supports the use of federal appropriations; e.g., Medicaid funding, which would include state matching funds. The Department supports the utilization of philanthropic foundations to fund public and private guardianship services. The Department supports the use of volunteers and in-kind to increase services and lower costs for the public and private sector. The Department supports the use of a surcharge on the civil suit filing fees to fund public and private guardianship services. The Department also support researching, identifying, and creating other funding sources to provide adequate funding for this vital service.

### FUNDING IMPLICATIONS

The Department of Human Services, in cooperation with the county social services agencies, conducted a survey of public guardianship in 1992 of fiscal implications for the cost of the public guardianship rule. The survey requested the counties to project costs to implement a guardianship system run by the county but separate from the case management system. For personnel costs only, for a case load of approximately 5,300 wards, the statewide estimate was approximately \$2 million. The recommendations contained herein, although difficult to project given the resources to complete this report, would be

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significantly less. This recommendation includes a significant reduction from 5,300 wards to a legislatively capped approximately 1,000 state wide wards. Simply, the personnel and mileage costs, without capital and administration costs, would be less than one-fifth of the original estimate -- closer to \$400,000. The other half of the bicameral office could run a similar cost due to staffing, data base computerization, training, and referral systems overall. Without the same fiscal research for the original proposal, it can only be estimated at approximately \$900,000. This would not include space, equipment, materials or other overhead costs.

### RATIONALE

#### To continue to improve public guardianship

The 1992 Task Force makes these recommendations based on the current national and state practices, and on the current literature on guardianship which is outlined in the body of this report. Most states with no public guardianship program have problems with unserved clientele. In the last eight years many states with no public guardianship programs have made legislative changes to allow public guardianship. Most of those public guardianship programs are funded at least in part through state and local funds. Most states with large public guardianship programs have problems with increasing clients and decreasing funds. Most states with large public guardianship programs are subject to political influence.

#### To expand and financially support private guardianship

It is nationally accepted practice that public guardianship is the most restrictive guardianship and needs to be the guardianship of last resort. It is accepted nationally that family and friends are the first acceptable option for guardianship, that a non-family member, non-professional, often called a "friendly guardian," is the next option, that a private professional guardian is the next level of least restrictive alternative, and corporations as the last least restrictive option before utilizing the public sector to act as guardian. The basis for this rationale is that the private sector is typically more able to give personalized service to wards which protects client rights more thoroughly than the private sector. The same problem exists in states with under-funded private guardianship services that exists in states with under-funded public guardianship systems. Those states have clients who are unserved.

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### **X. DEPARTMENT OF HUMAN SERVICES RECOMMENDATIONS TO THE LEGISLATURE**

#### **DEPARTMENT OF HUMAN SERVICES RECOMMENDATIONS**

Given the enormity of the financial, administrative, and social program tasks involved in this project, the Department recommends a long term approach to the solution. The Department is aware that the Task Force recommendations as progressive, state-of-the-art guardianship activities. The Department is also aware that reality based administration is the task of the Administrative branch of the government.

With practical application in mind, the Department recommends convening an advisory group to develop a plan for a two-year pilot project for contracting for public guardianship. The standards of the adopted public guardianship rule, Minnesota Rules parts 9525.3010 to 9525.3100, must apply and be adhered to.

As much as possible, within the frame work of the time and money, the philosophical underpinnings of the Task Force recommendations should be attempted for the pilot project. The pilot should be analyzed extensively, before, during, and after implementation to ensure success in replications and expansion in the future. The analysis and assessment should be completed by researchers familiar with statistical and programmatic analysis.

At the end of the pilot project, the Department should report back to the Legislature with the findings of the project and, at that time, make further recommendations.

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### **XI. ACKNOWLEDGEMENTS**

The Department of Human Services wishes to thank the members of the 1992 Public Guardianship Task Force for their gracious help in time and effort for input on this report. (See Appendix # 1 for the list of the "1992 Public Guardianship Task Force Membership.")

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### XII. REFERENCES

The following references, although not quoted, were studied and available for the Public Guardianship Task Force. They are helpful cites for us and others to review on their quest for knowledge about improving the guardianship systems.

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### **XIII. APPENDICES**

1. 1992 Public Guardianship Task Force Membership List
2. Incidence of Public Wards and County of Residence
3. Prototype Bicameral Guardianship Office

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**APPENDIX #1**

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## APPENDIX #3

### PROTOTYPE BICAMERAL DESIGN STATE GUARDIANSHIP OFFICE (10/92)

#### A. Bicameral State Guardianship Office

##### 1. GUARDIANSHIP ALTERNATIVES UNIT

- a. Central Listing for Private and Public Conservatees and Wards and Conservators and Guardians
- b. Central Training Center for Private and Public Conservators and Guardians
- c. Central Center for Technical Assistance for Public and Private Conservators and Guardians
- d. Background Checks and Screening for Public or Private Guardians or Conservators
- e. Certification Administration for Public and Private Conservators and Guardians
- f. Referral for Investigations for Complaints Against Private or Public Conservators or Guardians
- g. Reimbursement Administration for Volunteer and Friendly Guardianship or Conservatorships

##### 2. PUBLIC GUARDIANSHIP UNIT

- a. Structure
  1. Director
  2. Clerical Support
  3. Attorneys per X # of Clients
  4. Regional Staff per X # of Clients
- b. Administration
  1. Budget
  2. Space
  3. Transportation
  4. Materials/Supplies
  5. Equipment

#### B. TRANSITION AND START-UP

1. Legislation
2. Hiring process
3. Budget and Finance
4. Space and Materials Acquisition
5. Space and Materials Transition
6. Record Transition
7. Client Transition
8. Service Provision