

Guardianship Advisory Council (GAC) Meeting
Wednesday, January 5, 2011 (9:30 a.m.)

Summary

Chair: Duane Christensen
Co-Chair: Sandy Skaar
Minutes Taken by: Cecelia L. Salazar, Office of Guardianship
Members Present: Doris Husted, NM Arc, Marsha Shasteen, Senior Citizens Law Office; Leticia Garcia, Tierra Alta Guardianship Service; Leo Garza, AARP; via phone; Christine Wester, DOH, DDS; Judith Liddell, Family Member; Jim Jackson, DDPC Council Member; Terri McCaslin, DDPC Council Member; Ed Kaul, ARCA; Joanie Roybal, Public Education Department-Special Education; Jane Yee, ALTSD; Shannon Cupka, Ombudsman; Frank Fajardo, Manager Office of Guardianship; Denise Tierney, Office of Guardianship
Telephonically: Dennis Drucker, Disability Rights; Grace Escamilla, Department of Veterans' Services; Nancy Oriola, Decades; Tina Sibbitt, AOC
Absent: Eleanor Bratton, Attorney; Scott Aaron, Attorney; Erin Ruscetti, Necessity Case Management; Ann Christensen, CornerStone Guardianship Services; Elder and Self Directed Program; Ling Faith Heuertz, NM ARC; Angie Thompson, DDPC Council Member; Dianne Griego, DDPC Council Member; Gabrielle Sanchez-Sandoval, DOH; Department of Human Services, Division of Vocational Rehabilitation, Simon Romo, CYFD; Jose Arturo Camacho, VA Medical Center
General Public: Robert Richards
(Non-members)

Duane Christensen called the meeting to order at 9:35 a.m; he moved to review the agenda before beginning, and it was also read for those that did not receive it and were participating telephonically. There were no additions to the proposed agenda. Leo Garza moved to accept the minutes of the prior meeting and Doris Husted accepted. The minutes were approved.

- 1.) Updates were made by each State Agency on the possible affect from proposals for restructuring government, etc. The majority of the attendees had no news to communicate to the council. Some were still waiting for their administration to be appointed.
- 2.) Cristy Marchand was introduced by Frank as the new DDPC Director
- 3.) Frank explained the Office of Guardianship budget as such:
 - Being okay under the 50% Rule through Dec. 31st (not over-spend budget through middle of the Fiscal Year; thanks to the \$209,800 Federal stimulus funds received previously from the Governor).
 - We received the first Medicaid matching funds for 1st quarter (\$83,438.22); we are amending our initial agreement with HSD from \$100K/yr. to \$400K/yr.
 - this will allow us to approve paying for Mental Health Treatment Guardians month-to month
 - we have assigned all cases from our Waiting List, but will need to stop again prior to FY-12.
 - The Medicaid and Federal stimulus funds eliminate our previously projected shortfall of \$419,467.78 (Salaries & Benefits of \$69,216.42, and \$350,251.36 in Contractual Services).
 - May rescind our request for Supplemental funds once the amendment is approved for Medicaid.
 - Don't know yet re: possible budget cuts (request to identify 10% savings from low priority programs).
- 4.) The Workload as of November 30th was described by Frank. He also included that there were no pending Jackson class cases and as of this date there was not a Waiting List. Other information re: the workload is as follows:

- maintaining a level number of protected persons under corporate guardianship (788) well below projections, compared to an increase of 8 per month in prior years
 - averaging 21% fewer new Intakes per month - 23 average new Intakes per month this fiscal year, compare to 29 average in FY-10. Total of 114 Intakes for July-Oct. (62 Corp., 52 Family)
 - averaging 64% fewer legal services completed - 12 average per month completed legal services cases, compared to 33 average in FY-10. Completed 59 in July-Oct. (38 Corporate and 21 Family guardianships).
 - same rate of new Mental Health Treatment Guardianships per month - averaging 33.6 per month, compared to 34 average in FY-10.
 - 102 total pending cases through legal services (46 for Corporate guardianship including 8 APS, 56 Family includes 22 Pro Bono).
 - Pro Bono legal services and families paying discounted fees by our contractors reduced Waiting List by almost half.
- 5.) Dennis Drucker withdrew his past motion which stated that the Office of Guardianship should not pursue guardianships for those people who object to having a guardian appointed for them. This was after a subcommittee discussed this concern.
- 6.) The new video on “Alternatives to Guardianship” was reviewed. Discussion was made on educating the public on Advance Directives, and other preparations, and there was consensus that the State of New Mexico should designate a week for this. Sandy Skaar proposed to use the National Date of April 16th and have the campaign run for one week. Duane suggested a meeting to organize these efforts. Frank will prepare a Draft Proclamation and Press Release to present to the DDPC Council, for submitting a proposal to Governor Susanna Martinez.

On Jan. 7th, the DDPC Council adopted a motion to support and provide leadership to present this proposal to Governor Susana Martinez for a proposed Governor's Proclamation for designating April 16th thru the 24th as “Individual Personal Planning Week”. Per our GAC meeting, we submitted Drafts to the DDPC Council of a proposed Proclamation and a proposed Press Release.

- 7.) Sarah briefly reviewed the proposed changes to the Office of Guardianship Regulations (NMAC). There were some questions and suggestions at the meeting, and Sarah also encouraged everyone to submit other suggested changes and other input. Her examples of the changes were:
- Add Foley referrals (one time residents of the State Training Schools and released after January 1, 1970) to Jackson Class to the Priority Categories and, when resources are limited, allow the office of guardianship to prioritize referrals by rating them based upon an individual’s need for guardianship.
 - Delete terms that are either 1) not actually used in our rules or inappropriate to include in the definitions; 2) the definition conflicts with the probate code definition and so is invalid; or 3) the definition duplicates that found in the probate code and so serves no purpose.
 - Update re: eligibility requirements for our services. This includes a change to our family guardianship income requirements from 300% to 200% of the poverty level to be in line with other legal programs serving low income clients, including Legal Aid, Law Access (pro bono) and the UNM law clinic.
 - Update to reflect the current requirement of a completed written application and supporting documentation, i.e. tax returns. Delete the incorrect language requiring an assessment by a health care provider in order to be eligible for services, rather than during the legal guardianship proceeding.
 - Delete language that conflicts with or duplicates the venue provision in the probate code.
 - Add the probate code requirement that the office of guardianship serve as an interested person as defined in Subsection I of Section 45-5-101 NMSA 1978. This includes the office’s counsel serving as petitioning attorney and transferring, limiting or terminating guardianships.
 - Add that the complaint against a contractor should include what actions were taken in an attempt to resolve the complaint prior to submitting it to the office of guardianship.
 - Substitute the word “complaints” for “grievances” to conform to the probate code language.

- 8.) Students and need for guardianship - Joanie presented the Draft Fact Sheet prepared by the NM Public Education Department. There was discussion re: the default being to continue to allow parent involvement in a student's education (IEPs, etc.), unless the student decides otherwise. The Draft Fact Sheet appears to say that the default is that parent involvement stops, unless the student decides to allow it. Dennis Drucker indicated that he thought the Fact Sheet was overly focused on guardianship and not on any alternatives. Frank suggested that the Department of Education hold off on distribution, and will be scheduling a meeting with those interested from the Council with the new Administration of the Department of Education to discuss this concern with the Draft Fact sheet, and concerning the DRNM proposals.
- 9.) Re: possible legislative proposals re: guardianship of adults
 - The only remaining proposed changes to the NM Probate Code (from the recent Work Group led by Dennis) is that certain guardianship powers to remain for up to one year after the death of a protected person or until the appointment of a personal representative. Frank will contact Jack Burton to see if he can assist in getting this proposal re-introduced.
 - There was discussion related to the proposed Statutory Damages re: guardians and conservators. This proposal has been dropped.
 - The Uniform Adult Guardianship & Protective Proceedings Jurisdiction Act (UAGPPJA) needs to be introduced again. Proposed by the Uniform Law Commission (ULC) to clarify jurisdiction and provide a procedural roadmap for addressing multi-state dilemmas. This was prepared by Jack Burton and introduced/sponsored by Senator Michael S. Sanchez (Belen, Valencia County) in the 2009 regular legislative session. Jack Burton has indicated that he will have the same Bill re-introduced.
- 10.) Recent GAO Report re: exploitation by guardians – Frank explained that our Corporate Guardian contractors require National Certification, and Criminal Histories screening (thru DOH).
- 11.) Frank described to the Council the Initiatives the Office of Guardianship is currently pursuing:
 - Alternatives to Guardianship – new video has been done and a campaign will be initiated for “Advance Directives Day”.
 - Pro Bono services/volunteers – We currently have 34 cases at Law Access New Mexico which 17 are completed. An estimated 12 cases have been paid by families directly to Attorneys. The Law Clinic of UNM has 5 family guardianship cases assigned.
 - Mental Health Treatment Guardians – new video plus education and training
- 12.) The Strategic planning session item was skipped per Chris as there has been no current activities.
- 13.) There was no old business initiated.

The new business was introduced by Chris as how some states have advance directives available at a state clearing house. Such as in Montana where an advance directive is filed at a designated state agency, and when needed, a hospital or doctors office could get the information needed for the orders indicated in the advance directives. This would be useful, but protections are needed for privacy and confidentiality, and for ease in maintain the material current. There are also some private companies that do this such as “Emergency Access to My Medical Directives”.
- 14.) Chris reviewed the schedule of the future GAC meetings as: March 25th, June 17th, September 16th, and December 16, 2011.

The meeting was then adjourned at 11:40 A.M.

The purpose of the Guardianship Council is to provide advisory counsel to the NMDDPC Office of Guardianship regarding the needs and rights of persons who are incapacitated or allegedly incapacitated.