

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

- Agenda -

1. Updates by each State Agency - possible affect from proposals for restructuring government, etc.
2. New DDPC Director, Cristy Marchand of The Arc of Maryland
3. Budget:
 - We are 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. Workload as of November 30th – we are:
 - 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. Report from subcommittee re: What if the proposed protected person in a Priority case objects to the proposed guardianship?
6. Review new video on “Alternatives to Guardianship”
 - Part 1 - Intro (including re: Students)
 - Part 2 - Medical
 - Part 3 - Financial
 - Part 4 - ResourcesEducation/training re: alternatives to guardianship - the State designate an “Advance Directives Day”?
7. Proposed changes to our OG Regulations (NMAC):
 - 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 and 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
- status of Fact Sheet and other possible work with the NM Public Education Dept.
 - seek a decision from the State Attorney General's Office re: whether DRNM's proposal may be implemented by changes to the PED's regulation, rather than requiring a change to the statute.
 - DRNM's proposal (similar to surrogate decision-maker for medical) would allow the appointment of a parent (or other individual) for an adult student who doesn't have the ability to provide informed consent, but hasn't been determined incapacitated by a Court.
9. Possible legislative proposals re: guardianship of adults
- Possible proposed changes to the NM Probate Code from the recent Work Group led by Dennis:
 1. Re: 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.
Also provide a less formal mechanism for a guardian to seek clarification from the court on the scope of the guardian's powers and authority when this is not clear in the original order.
 2. Re: Statutory Damages re: guardians and conservators (see attached) – this involves enforcement of the authority/role of the guardian re: someone who intentionally violates the guardianship court order, or a person who knowingly misrepresents a Court Order.
 - 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.
10. Recent GAO Report re: exploitation by guardians - our contracts with corporate guardians require National Certification, and Criminal Histories screening (thru DOH)
11. Initiatives:
- Alternatives to Guardianship
 - Pro Bono services/volunteers
 - Mental Health Treatment Guardians – new video plus education and training
12. Any remaining items from our Strategic Planning session (Goals/objectives), possible subcommittees, and membership of any subcommittees.
13. Other New Business and Update Old Business, and a Review of Action Items from our prior meetings.
14. Our schedule of future GAC meetings (on 3rd Friday) is: March 25th, June 17th, September 16th, and December 16, 2011.

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

These meetings are normally in the conference room at the Office of Guardianship, DDPC, 810 W. San Mateo, Ste. C, Santa Fe, NM 87505-4144, unless scheduled otherwise.

GOALS & OBJECTIVES
from Strategic Planning Session Nov. 13, 2009

The following goals and objectives were voted on and agreed upon and are in priority order.

GOAL 1: To Review Current Issues and Policies of OGG

- Objective 1: Identify issues with help of GC and schedule a presentation by OOG at each quarterly meeting
- Objective 2: GAC will provide feedback on proposed operating policies.

GOAL 2: To Clarify and Strengthen Relationship Between OOG and GC

- Objective 1: The GAC will revisit and come to consensus on Mission Statement
- Objective 2: Review limited role of Advisory Boards and need for official by laws

GOAL 3: To Enhance Training and Education

- Objective 1: Identify and prioritize needs in the community
- Objective 2: Recommend the establishment between OOG and CDD (UNM)
- Objective 3: Identify groups, entities stakeholders who have an association with the need for info/training-
end of first quarter

GOAL 4: To Identify Potential Policies Based on Task Force/ Work Group Products

- Objective 1: Report from each work group of their status and product
- Objective 2: WORK GROUP will give an overview with plan for addressing results by March 2010
- Objective 3: Summarize products of all work groups by years end

Possible legislative proposals re: guardianship of adults:

Proposed change to NM Probate Code:

[§ 45-5-306. Death or incapacity of guardian](#); Death of the protected person

- A. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian, the determination of incapacity of the guardian or upon removal or resignation as provided in [Section 45-5-307 NMSA 1978](#). Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person.
- B. Upon the death of the protected person, the guardian shall submit notice to the appointing court .The guardian shall notify any relatives of the protected person known to the guardian The following guardianship powers shall remain for up to one year after the death of a protected person or until the appointment of a personal representative and be exercised in accordance with the preferences of the protected person if known:
 - (1) the power to arrange and pay for a funeral and consent to cremation;
 - (2) the power to request and receive medical, financial, or other records of the protected person;
 - (3) the power to request an autopsy and to obtain the results thereof;
 - (4) the power to make and file a financial accounting; andany other powers which are incidental to the closing of and accounting for the guardianship and which are fully reported to the probate court.

Proposed change to NM Probate Code:

45-5-304.1. STATUTORY DAMAGES - Guardians

A. Any individual or entity that intentionally refuses to honor a guardian's authority as stated in the guardianship order is subject to liability to the aggrieved individual or organization for damages of five thousand dollars (\$5,000) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney fees.

B. A person or entity who submits for acceptance a court order or letters that the person or entity knows has been superseded or if the court order or letters submitted have been intentionally falsified, forged, altered, defaced or obliterated, or who attempts to conceal a valid court order or letters, is subject to liability to the individual or organization receiving the invalid court order or letters for damages of five thousand dollars (\$5,000) or actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

C. The damages provided in this section are in addition to other types of relief available under other law, including civil and criminal law providing for disciplinary procedures.

Proposed change to NM Probate Code – Conservators:

45-5-423.1 STATUTORY DAMAGES - Conservators:

A. Any individual or entity that that intentionally refuses to honor a conservator's authority as stated in the conservatorship order is subject to liability to the aggrieved individual or organization for damages of five thousand dollars (\$5,000) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney fees.

B. A person or entity who submits for acceptance a court order or letters that the person or entity knows has been superseded or if the court order or letters submitted have been intentionally falsified, forged, altered, defaced or obliterated, or who attempts to conceal a valid court order or letters, is subject to liability to the individual or organization receiving the invalid court order or letters for damages of five thousand dollars (\$5,000) or actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

C. The damages provided in this section are in addition to other types of relief available under other law, including civil and criminal law providing for disciplinary procedures.

Other Possible legislative proposals re: guardianship of adults:

There may also be some other recommendations re: the role of the Guardian ad Litem (GAL) and the Court Visitor:

- Strengthen the role of the Guardian ad Litem (GAL) as an advocate for the proposed protected person's maximum autonomy consistent with the level of incapacity as determined by the court.
- Consider extending the role of a Guardian ad Litem past the adjudication phase of a guardianship proceeding to ensure the guardian's compliance with reporting requirements and other responsibilities.
- Clarify the role of the court Visitor in guardianship proceedings to include observations and recommendations concerning areas, if any, where the proposed protected person should retain some or all decision-making authority.

There are other remaining recommendations from the Guardianship Task Force (see the attached Synopsis), including:

- Review issues involving conservatorship, which are similar to the guardianship issues examined by the Task Force, and consider ways to integrate responsibility for training and oversight of conservatorship functions with the organizational structures that address guardianship matters.
- Designate an entity other than the Human Services Department to investigate complaints against the current Office of Guardianship, in order to avoid the appearance of a conflict of interest related to HSD's authority over programs providing direct services to persons whose guardians are funded through the Office of Guardianship.

Although we don't intend to have specific proposals on this for this session, here are some long range concerns re: adult guardianship and (conservatorship):

- lack of oversight and monitoring of guardians (other than our contractors)
- lack of oversight and monitoring of conservators
- no state requirements re: criminal background and credit checks including bankruptcy, certification, licensure, etc. (other than our contractors)
- who does anyone call if they suspect undue influence with Powers of Attorney, etc.
- need systemic improvements re: Mental Health Treatment Guardians and confusion with Probate Code Guardians
- need systemic improvements re: schools requiring a guardian for students and not allowing continued parental involvement
- need for education and training of Judges, Court personnel, attorneys, guardians, care givers, health care personnel, financial institutions, etc.
- budget for guardianship of last resort, Mental Health Treatment Guardians of last resort, and legal services to appoint a family guardian (indigency)
- where should the Office of Guardianship be organizationally (see the Guardianship Task Force Report).

Our prior statutory changes enacted in 2009 from recommendations from the Guardianship Task Force were in House Bill 161 sponsored by Rep. Bill B. O'Neill (Albuquerque, Bernalillo County).

The nation-wide 2009 state adult guardianship legislative update is at:

<http://new.abanet.org/aging/Pages/GuardianshipLawandPractice.aspx>, and Click on 2009 in the first section, State Guardianship Laws and Updates, I. State Adult Guardianship Legislation: Directions of Reform.