

Guardianship Advisory Council Meeting
Friday, August 17, 2007
9:00 a.m. ~ NMDDPC Conference Room
Minutes

Present: Doris Husted, Edward Kaul, Gerald McBride, Patricia Wagner, Robert Richards, Frank Fajardo

Guests: Julie Molina, Marsha Shasten

Recorder: Mercy Gonzales-Clay

TOPIC	DISCUSSION	ACTION PLAN/ FOLLOW UP	RESPONSIBLE PERSON(S)	STATUS
<i>Introductions</i>	Introductions were made around the table.	Information		Closed
<i>Discussion of New Business and update of Old Business</i>	<p><i>Doris</i>, Chairperson, informed the group that Dennis Drucker, who was unable to be here today, asked Doris to present the information requested regarding the Jackson class (JC) lawsuit members list.</p> <ul style="list-style-type: none"> ➤ There are still JC individuals who still need a guardian. P & A and others are busy identifying people on the list. Dennis is working on the list but is unclear where the list is. ➤ Advice to guardians coming from the Office of Guardianship, where he feels that direction needs to be given from Office of Guardianship (OOG) and conflicting directions he feels that OOG gives to the guardians. Rob states that more definition be give to what authority of the guardians is. Doris suggested that OOG should define the authority of the guardians and Rob stated that he was hesitant to define that. The issue of education the public about the role of the guardian was discussed. It is the general feeling of the council that people do not understand the role of the guardian and restrictions it places upon the ward. People often times confuse guardianship with conservatorship. ➤ Another issue that was discussed was the Guardian <i>ad litem</i> (GAL) and how long the GAL is involved. Gerald discussed the case of Collins v Tabet. The courts are looking at the role of GAL and in some cases expecting GAL to act as an advocate of the court or extension of the court v. acting as an advocate for the ward. Gerald believes the role of the GAL is unclear and that the courts in some cases are directing the role of the GAL. 	Information		Ongoing
<i>GAC Subgroup</i>	<p><i>Doris</i> informed the council that there were big discussions when a ward already has a decision maker in place and that the initial decision makers should still be involved wit the decisions for the ward.</p> <ul style="list-style-type: none"> ➤ Gerald states that almost always he will ask that the decision maker be invalidated, which can cause conflict when caring for the ward. ➤ Problems with having an agent already in place who is not doing their job and the feeling that should not be allowed to continue in this role. ➤ Discussions were about when a decision maker is doing their job and should not be invalidated. 	Information		Ongoing

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<i>House Joint Memorial 34 Task Force</i>	<p><i>Frank Fajardo</i>, informed the council that the task force was interested in maybe piggybacking with what they were discussing and working on.</p> <ul style="list-style-type: none"> ➤ Frank asked for recommendations from the council on the role of the guardian. Doris stated that the National Guardianship Association has the roles outlined and that maybe it could be modified for New Mexico specific and the roles should be more clearly defined for corporate guardians, private guardians, etc. Gerald and Rob agreed that the code reads that the role of the guardian should bring their wards into the home, clothe them, feed them and be aware of their whereabouts, 24/7 and the roles of the corporate guardian and the family guardian are different. Rob discussed a complaint against a guardian in which a ward took off and slept 2 nights on the streets and the issue of what is the role of the guardian. Discussion involved how there are times when the wards and difficult and non-compliant and no one seems to have control over them. Whether they are medically noncompliant, psychologically noncompliant or physically noncompliant. The recommendation to look at a change in the probate code for the role of the guardian was discussed. ➤ Frank stated that he would share the information from the task force with the GAC. He also stated that before the next HJM meeting he would like to create a template for findings on the committees. ➤ Frank gave a report on the task force subcommittees. Doris would like to see differentiation in the statutes on corporate guardians v private guardians v family guardians. 	Information		Ongoing
<i>Number on the waiting list, mental health evaluation reports and waiting time for reports</i>	<p><i>Julie Molina</i>, have her report as follows:</p> <ul style="list-style-type: none"> ➤ There are 363 people on the waiting list for legal services. Ninety (90) eligibility letters have gone out. ➤ UNM neuropsych evaluations – 61 total evaluations with the following breakdown on guardianship status: <ul style="list-style-type: none"> • 51 – no change • 1 – restored • 2 – transferred to family • 5 – change in type of guardianship • 2 – no change at this time. • Waiting time from evaluation to report is approximately a month. <p>Doris spoke about how valuable these reports have been to them in their services. She stated that it sometimes explained their clients behavior. She also spoke about the use of telemedicine in the future for neuropsych evals and the ability for people from around the state and expense involved in trying to transport them to UNM for their evaluations. With telemedicine these people may only need to travel to a certain area of the state and this also give the local clinicians a chance to meet with them and know something about the people they are serving. The UNM contract ends 6/30/2008.</p> <ul style="list-style-type: none"> ➤ Frank asked for the council’s feelings on this program: <ul style="list-style-type: none"> • Ed thinks this gives providers stability and allows for clients needs more or less. 	Information		Ongoing

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<i>Other</i>	<ul style="list-style-type: none"> • Gerald stated that he knows these evaluations had been an issue in the past. ➤ Rob suggests a change in the regulations to require financial eligibility for assistance through the OOG to reflect household income as opposed the proposed guardian's income. For instance, a wealthy businessman and his wife should file for guardianship, using the unemployed wife's income would qualify them for free assistance from OOG. ➤ Doris brings up the question of whether a contracting guardian can say that they want to opt out of their services to wards and the fact that some guardians can say that they've heard that specific cases are difficult and they refuse to take them on. Frank asked the council for suggestions on how to handle these issues. Gerald stated that there are cases that are unavoidable. ARC cannot deny services or opt out of services in their cases. Patricia brings up a point wherein a guardian who may have a difficult ward decides not to do their job can there be a contempt charge? Ed wonders if there are other solutions, for instance, a financial contract with fewer cases. ➤ Doris also brings up the size of guardianship agencies and the problems that can arise when a "mom and pop" organization with very limited personnel decide to go on vacation, out sick, etc and emergencies arise with their wards. In large guardianship agencies, any guardian in the organization can make these decisions while. Discussion about standards for guardians, including family were discussed. Legislators most like will not include standards on family guardians but it was suggested that a background check should be done. She also was interested in internal support for small agencies as well as mental health of guardians. Ed informed the group that 87% of the applicants that apply at ARC of NM do not meet their employment standards. Rob suggested that a temporary POA be done while guardians are out of contact. ➤ Frank asks if a weighting and compensation system would be a good process. Ed cautions against a weighted system urges negotiated contracts with enhancements. Gerald stated that part of the problem is identifying the difficult cases. Often times people are referred and little to nothing is known about these people unless background checks are done which is expensive and invasive. ➤ Gerald brings up a case where a ward wanted to get rid of his current guardian and have his parents be the guardian. APS were opposed to this as they were not suitable and the client wanted help to take this back to the courts. The question was asked, "How can we help someone get their day in court?" Rob stated that in one case he called the original GAL and asked him to ➤ Gerald states that in some cases the judge declares this to be ex parte communication and does not need to be looked at when in fact it should be heard. ➤ Ed also brings up the issue that a number of physicians are refusing to participate in a patient's care without a guardian. The goal should be education and the how it affects both the guardian and the ward. Gerald stated that this is not only happening with developmental disabled population but with the elderly. He gave an example of an elderly woman who fell on the street who may have had a mini-stroke and had been drinking and the mentality that sticking her in a nursing home and giving her a guardian with no advocate was appropriate. Although the woman was capable of taking care of herself, her 	Information		Ongoing

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<i>Other cont</i>	<p>rights were basically taken away. Patricia cited that there were 3 clients with guardians who were not needed anymore and it took 18 months to terminate their guardianship. In most instances, workers are afraid of the bad press so they err on the side of caution. Pat states that this is also happening in the schools with the 18-22 year olds.</p> <p>➤ Pat talked to the council members about the upcoming legislative session and that one additional attorney would be requested, as well as a training person. The budget also needs to be in by 9/4/2007.</p>			
NEXT MEETING	Friday, September 21, 2007 9:00 AM NMDDPC Conference Room			