

**2021 HOUSE HUMAN SERVICES**

**HB 1354**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1354  
2/2/2021

Relating to the commission on guardianship and exempt administrative agencies; to provide a penalty; to provide for a legislative management report; and to provide a continuing appropriation

**Chairman Weisz** opened the hearing at 9:01 a.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Guardianship commission establishment
- Commission responsibility details
- Director appointment
- Record accessibility
- Maintaining confidentiality

**Rep. Kathy Skroch, District 26 (9:02)** introduced the bill, testified in favor, and submitted testimony #4884.

**Cynthia Feland, District Court Judge South Central Judicial District & Chair Guardianship Workgroup (9:18)** testified in favor and submitted testimony #4897.

**Rebecca Anderson (9:43)** testified in favor.

**Donna Byzewski, Program Director Corporate Guardianship Program for Individuals with Intellectual Disabilities at Catholic Charities North Dakota (10:03)** testified in favor and submitted testimony #4729.

**Audrey Uhrich, Guardian & Protective Services (10:12)** testified in favor and submitted testimony #4777.

**Margo Haut, Founder & Director of Guardian Angels, Inc. (10:21)** testified in favor and submitted testimony #4784.

**Shelly Peterson, President North Dakota Long Term Care Association (10:25)** testified in favor.

**Maggie Seamands, Executive Director Sanford Health (10:27)** testified in favor and submitted testimony #4790.

**Additional written testimony:** #4673, #4712, #5230

**Chairman Weisz** adjourned at 10:31.

*Tamara Krause, Committee Clerk*

## HOUSE HUMAN SERVICES COMMITTEE

Testimony in support of HB 1354

67<sup>th</sup> Legislative Session

Representative Kathy Skroch, District 26

Thank you, Chairman Weisz, and members of the Human Services Committee for allowing me to appear before you today to introduce HB 1354.

For the record, I am Representative Kathy Skroch, representing District 26 which is made up of portions of Dickey, Ransom, Richland and all of Sargent counties of ND.

I appear before you today to introduce HB 1354 which will create a Commission on Guardianship. The proposed bill is offered in response to exhaustive studies on guardianship. This includes the Winsor C. Schmidt national study on guardianship, **"Wards of the State: A National Study of Public Guardianship"**. The study was conducted to assess the state of guardianship as it relates to current law, its provisions and meeting the demand for guardianships. The study has been used as a model for adopting state statutes for guardianship programs across the nation. Concerns about a coming crisis drew national attention of the U.S. Congress in the early 1980 and change began. Despite efforts to address the critical shortage of guardianship services in ND and across the nation the problem has persisted for well over 25 years.

A similar study relating only to North Dakota was requested by the ND Department of Human Services in cooperation with the ND Legislative Council. This study, **"Guardianship for Vulnerable Adults in North Dakota: Recommendations Regarding Unmet Needs, Statutory Efficacy and Cost Effectiveness"**. It was also conducted by Winsor C. Schmidt. Recommended changes proposed took into consideration compliance with the **Olmstead Commission** requirements. At the time of this 2010 study there were 2,038 guardianship and conservatorship cases in ND. There were 323 new filings in 2010. In 2007 the ND Legislature approved funding for 35 additional openings for corporate guardianship services for people with developmental disabilities. Catholic Charities of ND contracted with the state to provide guardianship services, the Guardianship Program of Catholic Charities, which in 2011 had nearly reached its capacity of 414 wards. CCND continues to have a waiting list.

The study also pointed out best practice standards for the guardian/ward ratio set as a 1/20 ratio. So critical is the need for services, that providers often face heavy caseloads and emergency guardianship request situations. Providers at times are operating at 1/30 to 1/35 ration.

The shortage has been further impacted by increased demand to provide for individuals suffering with drug addiction and mental illness; an aging population of the "baby boomer" generation and loss of spousal care givers; and lack of family support available.



A Guardianship Task Force in conjunction with legislators and stakeholders has worked collaboratively to reach the point where legislation could be proposed to address the shortage of guardians. The need for a commission on guardianship was clearly identified. A subgroup was then established for the specific purpose of carefully drafting legislation. The proposed legislation, HB 1354, is the end result of years of work to address procedural issues, incapacity assessments and the accountability of guardians.

**Now to the bill itself: Section 28-32-01**

**Page 1. Section 1, line 10-**adds **subdivision z.**, which establishes "The commission on guardianship."

**Section 2. AMMENDMENT to 50-24.1-07**, allows for the collection of debts owed to a provider upon the death of a resident as claims against the estate.

**Page 2. Section 3**, Creates a new chapter 54-67 which establishes:

**54-67-01. Definitions-** all the definitions used in this chapter.

**Page 3. -02, line 10**, spells out the purpose and structure and **membership** of the commission.

**Page 4. -03., line 21** details the responsibilities of the commission.

**Subdivision a.** relates to establishing standards;

**On page 5, line 8, subdivision b.** addresses rule writing related to a wards ability to pay for services provided

**(c. through i. are all related to procedures)** **c.** process of contract guardians; **d.** authorizes the commission to establish guardian offices as considered necessary; **e.** establishes a method for tracking and monitoring caseloads related to contract guardians and guardians; **f. duty to submit a budget request to the office of management and budget.**

**Page 6, -04. Starting on line 15**, authority of the Commission to appointment a director, establishes responsibilities and duties and provides for a report to Legislative Management.

**Page 7, -05, line 10**, establishes the Guardianship fund and continuing appropriation authority

**Page 7, -06, lines 16 through 19 continuing to Page 8, lines 1 through 16**, all relate to the keeping and handling of and accessibility to records and data; and the protection of confidentiality

**Page 8, lines 17 through 19**, provides for a penalty if an individual is in violation of this section subject to the penalty provided in section 12.1-13-01 for the wrongful disclosure of confidential information.

In closing, I have been a co-guardian since 2003. There was a point in time where a doctor suggested that my husband Michael and I give up being guardians for our son. The doctor claimed that then we could just be his friend, that it would be less controversial when dealing with his severe relapses of his mental illness. We prayed about this, a lot, then began a search to see if we could find a provider of guardianship services.

1. There weren't any available.
2. One service which provided two guardians was too far away. The cost of travel for them to meet with our son ate up all their profit.
3. They were already maxed out on clients.
4. They didn't take people with mental illness, especially severe cases.

So, we are still guardians, have a great relationship with our son and are glad we didn't turn the responsibility for his care over to a different provider.

This concludes my testimony in support of HB 1354 which creates a Commission on Guardianship. I encourage a DO PASS recommendation from the committee.

I will stand for question.

1. <i>Estimated Biennium Costs of Current Private Contractor Model with 1:36-39 Staff-to-Ward Ratio</i> .....	135
2. <i>Cost Savings from Public Guardianship with 1:20 Staff-to-Ward Ratio</i> .....	136
IX. CONCLUSION .....	137
X. APPENDIX: GUARDIANSHIP CASES .....	139

## I. INTRODUCTION

Eighty-nine year old woman. Lives alone in the middle of nowhere. Home is a disaster. No running water, sewage system, toilet, etc. Rotten food, cat feces, garbage, and clutter everywhere. Since appointed guardians, we have weekly taken out groceries to her and as needed (150 miles round trip), called daily for reminders to take medications, taken her to several medical appointments (180 miles round trip), built new steps out of lumber we have, met with water, sewer, and fuel companies and set up services. She greets anyone that comes up to the front yard with a shotgun. She gets \$557 per month social security. There is no money for us to obtain our monthly fee.<sup>1</sup>

The above case of guardianship in North Dakota, described by DKK Guardian and Conservatorship Services Inc., Jamestown, North Dakota, raises a number of the state's current guardianship challenges: an increasing population of older, vulnerable individuals without willing and responsible family members or friends, great geographic distances, health care access and cost, risk of abuse or neglect, risk of violence, and organization, funding, and cost-effectiveness of guardian services. This Article presents the results of a study of guardianship services for vulnerable adults in North Dakota commissioned by the North Dakota Legislative Council. The study reviews the North Dakota statutes governing guardianship and public administrator services, evaluates the effectiveness of the statutes compared to other states, and compares North Dakota to national models. This study includes interviews of one to three hours with at least thirty-two guardianship stakeholders in North Dakota.<sup>2</sup>

1. Letter from Kristie Kinzell, DKK Guardian and Conservatorship Services, Inc., Jamestown, North Dakota, to Winsor Schmidt (Mar. 27, 2012) (on file with the author).

2. See Winsor Schmidt, Final Report: A Study of Guardianship Services for Vulnerable Adults in North Dakota, p.1, n.1 (May 30, 2012) (names and affiliations of guardianship



## DAKOTA

This first section identifies the extent of the need for guardianship services in North Dakota. Section A will address the number of guardians appointed by the courts, and the quantity of unmet need for guardian services. Section B will discuss the unmet need for guardian services measured by qualitative standards, i.e., the ratio of guardianship staff to clients, the guardian ward visitation standard, and standards regarding guardian licensing, certification, or registration.

A. NUMBER OF GUARDIANS APPOINTED BY THE COURTS AND THE UNMET NEED FOR GUARDIAN SERVICES

There were 2038 guardianship and conservatorship cases in North Dakota in 2010.<sup>6</sup> There were 323 new filings in 2010 and an average of 311 new appointments per year from 2008-2010.<sup>7</sup> In 2007, the North Dakota Legislature approved funding for thirty-five additional openings for corporate guardianship services for people with developmental disabilities that reduced a long waiting list of unmet need.<sup>8</sup> The Guardianship Program of Catholic Charities was projected to reach capacity of 414 wards by October 2011.<sup>9</sup> Catholic Charities is reportedly facing a new waiting list of at least twenty-five people with developmental disabilities needing guardianship services.<sup>10</sup>

Another source for identifying the unmet need for guardian services in North Dakota is a Guardianship Needs Assessment Survey conducted from January to February 2012 through the North Dakota Long Term Care Association of the fifty-eight Assisted Living Facilities, sixty-four Basic Care Facilities, and eighty-two Nursing Facilities. The response rate ranged from 69% to 79%.<sup>11</sup> The results for the number of adults in each facility type who do not already have a guardian and who need a court-appointed guardian (unmet need for a guardian) are: 7 adults for assisted living facili-

6. *Human Services Interim Committee Meeting*, 62nd North Dakota Legislative Assembly (Oct. 26, 2011) Interim Session (testimony of Sally Holewa, State Court Administrator).

7. *Id.*

8. *Consideration of SB 2012 before the S. Comm. on Appropriations*, 62nd North Dakota Legislative Assembly (Jan. 19, 2011) (testimony of Larry Bernhardt, Executive Director, Catholic Charities North Dakota).

9. *Id.*

10. Interview with David Boeck, Director of Legal Services, North Dakota Protection and Advocacy Project (Jan. 13, 2012); Interview with Donna Byzewski, Director of Guardianship Services, Catholic Charities (Jan. 14, 2012).

11. E-mail from Shelly Peterson, President, North Dakota Long Term Care Association, to Winsor Schmidt (Feb. 6, 2012) (on file with author).

ties, 46 adults for basic care facilities, and 296 adults for nursing facilities.<sup>12</sup> The results for the number of adults in each facility type who need a court-appointed guardian and do not have willing or responsible family members or friends to serve as a guardian or resources to employ a guardian are: seven adults assisted living facilities, forty-four adults for basic care facilities, and sixty-four adults for nursing facilities.<sup>13</sup>

The Guardianship Needs Assessment Survey was also used for the Developmental Center and for the State Hospital. The results for the number of adults in each facility who do not already have a guardian and who need a court-appointed guardian (unmet need for a guardian) are: zero for the developmental center and twelve adults for the state hospital.<sup>14</sup> The results for the number of adults in each facility who need a court-appointed guardian and do not have willing or responsible family members or friends to serve as a guardian or resources to employ a guardian are: zero<sup>15</sup> for the developmental center and nine adults for the state hospital.<sup>16</sup>

A person who is incapacitated enough to need a guardian, but who does not have willing and responsible family members or friends to serve as guardian, or resources to employ a professional guardian, is almost unimaginably helpless. With a guardian, surrogate decisions occur and a person remains autonomous. However, when a person is incapacitated and without a guardian, responsible decisions do not occur and a person loses autonomy.

There is some published research on the extent of the need for public guardianship. A 1983 survey in Florida found 11,147 identifiable persons reportedly in need of a public guardian.<sup>17</sup> Florida's population in 1983 was 10,704,805.<sup>18</sup> North Dakota's population in 2010 was 672,591.<sup>19</sup> A

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12. North Dakota Long Term Care Association, *Guardianship Needs Assessment Survey Results 2* (2012).

13. *Id.*

14. E-mail from Alex Schweitzer, Superintendent, North Dakota State Hospital, North Dakota Development Center (Feb. 17, 2012) (on file with author).

15. Catholic Charities provides guardianship services for individuals who need a court-appointed guardian in the developmental center. Schweitzer, *supra* note 14.

16. *Id.*

17. See generally Winsor Schmidt & Roger Peters, *Legal Incompetents' Need for Guardians in Florida*, 15 BULL. AM. ACAD. PSYCHIATRY & L. 69 (1987). The survey included Florida's seventy-four public receiving facilities, community mental health centers, and clinics, thirty private receiving facilities, eleven Aging and Adult district services, Developmental Services institutional and residential placements, and six state hospitals. The survey did not include private clients residing in nursing homes and in adult congregate living facilities, and the survey did not include transients. Several informants suggested 10% of nursing home residents in south Florida were incapacitated but without a guardian.

18. CENSUSSCOPE (FLORIDA), [http://www.censuscope.org/us/s12/chart\\_popl.html](http://www.censuscope.org/us/s12/chart_popl.html) (last visited Sept. 11, 2013).



certification of guardians as well as continuing education within the appointment process to ensure that all (i.e., professional and family) guardians meet core competencies.”<sup>46</sup> As recommended by the Wingspan national guardianship conference, North Dakota should “adopt minimum standards of practice for guardians, using the National Guardianship Association Standards of Practice as a model.”<sup>47</sup> In consideration of national standards, the successful experiences of fifteen other states, North Dakota stakeholder concerns about oversight and monitoring of guardians and guardian annual reports, and lack of criminal background checks and credit checks, North Dakota should license, certify, or register professional guardians, including education, continuing education, and adoption of minimum standards of practice.

“Wingspan”  
national guardianship conference  
Recommendation  
for court procedure  
state statutes.

### III. THE ESTABLISHMENT OF GUARDIANSHIPS

This section reviews the establishment of guardianships and the services available for assistance with the establishment of guardianships. Later, I will provide some recommendations for changes. Compared with the significant unmet need for guardianships, and the complexity of establishing guardianships, assistance with establishment of guardianships is limited. The Aging Services Division reported funding for assistance (petitioning and other related costs) with the establishment of thirty-two guardianships in the current biennium.<sup>48</sup>

North Dakota Century Code chapter 30.1-28 specifies the judicial process for the establishment of guardianships. Any interested person may petition for the appointment of a guardian for an allegedly incapacitated person.<sup>49</sup> No filing fee may be required for a petition by a member of the individual treatment plan team or by any state employee.<sup>50</sup> The court shall set a hearing date, appoint an attorney to act as guardian ad litem, appoint a physician or clinical psychologist to examine the proposed ward, and appoint a visitor to interview the proposed guardian and proposed ward.<sup>51</sup>

46. *Wingspan Implementation*, *supra* note 41, at 7. The 2013 North Dakota Legislature passed House Bill 1041 appropriating \$70,000 to the supreme court for developing and delivering guardianship training for the July 1, 2013 to June 30, 2015 biennium. See ABA Commission on Law and Aging, State Adult Guardianship Legislation: Directions of Reform-2013, p. 11, available at [http://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2013\\_final\\_guardianship\\_legislative\\_update\\_12-18-13.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_final_guardianship_legislative_update_12-18-13.authcheckdam.pdf).

47. *Wingspan*, *supra* note 40, at 604.

48. See Engan Testimony, *supra* note 28.

49. N.D. CENT. CODE § 30.1-28-03(1) (2010).

50. *Id.*

51. *Id.* § 30.1-28-03(3).

for 46% of federal Medicaid costs, and for long health care duration.<sup>74</sup> The elderly population is 9% of the Medicaid population nationally, but accounts for 27% of program costs.<sup>75</sup> One percent of the population accounted for 20.2% of total health care expenditures in 2008 and 20% of the population in the top 1% retained this ranking in 2009; the top 1% accounted for 21.8% of the total expenditures in 2009 with an annual mean expenditure of \$90,061.<sup>76</sup> The median intensive care unit (“ICU”) length of stay for patients without capacity and without a surrogate is twice as long as other ICU patients.<sup>77</sup>

Without sufficient appropriate guardianship services, significant health care costs are incurred through inappropriate institutionalization, insufficient deinstitutionalization, excessive emergency care, and lack of timely health care. Guardianship studies from Florida, New York, and Virginia report annual savings by guardianship programs ranging from \$3.9 million to \$13 million.<sup>78</sup> Half of the legally incapacitated public mental hospital patients without guardians in a Florida study could have been immediately discharged if a public guardian was available.<sup>79</sup> The Greater New York Hospital Association lost \$13 million in nine months awaiting appointment of guardians for 400 un-discharged patients.<sup>80</sup> Virginia saved \$5.6 million in health care costs in one year with appropriate public guardian services for eighty-five patients.<sup>81</sup> Florida saved \$3.9 million in

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74. See, e.g., Marguerite Burns, Nilay Shah & Maureen Smith, *Why Some Disabled Adults In Medicaid Face Large Out-Of-Pocket Expenses*, 29 HEALTH AFF. 1517 (2010).

75. See, e.g., BARRY FURROW ET AL., HEALTH LAW: CASES, MATERIALS AND PROBLEMS 570 (6th ed. 2008).

76. Steven Cohen & William Yu, *The Concentration and Persistence in the Level of Health Expenditures Over Time: Estimates for the U.S. Population 2008-2009*, AGENCY FOR HEALTHCARE RESEARCH AND QUALITY, Statistical Brief 354 (Jan. 2012).

77. See generally Douglas White, J. Randall Curtis, Bernard Lo, & John Luce, *Decisions to Limit Life-Sustaining Treatment for Critically Ill Patients Who Lack Both Decision-Making Capacity and Surrogate Decision-Makers*, 34 CRITICAL CARE MED. 2053 (2006). See also Anirban Basu, Romina Kee, David Buchanan & Laura Sadowski, *Comparative Cost Analysis of Housing and Case Management Program for Chronically Ill Homeless Adults Compared to Usual Care*, 47 (1pt2) Health Services Research 523 (2012) (housing and case management program for chronically ill homeless adults generated annual cost savings of \$6,307 per person); Laura Sadowski, Romina Kee, Tyler VanderWeele & David Buchanan, *Effect of a Housing and Case Management Program on Emergency Department Visits and Hospitalizations Among Chronically Ill Homeless Adults: A Randomized Trial*, 301 (17) JAMA 1771 (2009) (housing and case management reduces hospital days and emergency department visits for chronically ill homeless adults).

78. Schmidt, *supra* note 26, at 36 n.26 (New York); Schmidt & Peters, *supra* note 17 (Florida); Teaster et al., *supra* note 71 (Florida); TEASTER & ROBERTO, *supra* note 33 (Virginia).

79. See generally Schmidt & Peters, *supra* note 17.

80. Schmidt, *supra* note 26, at 36 n.26.

81. TEASTER & ROBERTO, *supra* note 33.



health care costs in one year with appropriate public guardian services.<sup>82</sup> Washington State concluded that the decrease in average costs of residential settings exceeded the cost of providing a guardian within thirty months in 2008-2011. Clients with a public guardian had a decrease of an average of twenty-nine hours in personal care needed each month, compared with an increase in care hours for similar clients; 21% of clients with a public guardian had a reported improvement in self-sufficiency in the previous three months.<sup>83</sup> The Vera Institute of Justice Guardianship Project in New York City obtained a reported net Medicaid cost-savings of \$2,500,026 for 111 guardianship clients in 2010.<sup>84</sup>

North Dakota has experienced some deinstitutionalization through guardianship. Catholic Charities North Dakota reports residential placement moved from a more restrictive and expensive setting to a less restrictive setting for twenty-two guardianship clients in 2011. Seven clients moved from the North Dakota State Hospital, two clients moved from the Developmental Center, two clients moved from a nursing home to an Individualized Supported Living Arrangement (“ISLA”), and one client moved from a hospital to a nursing home.

#### V. THE ENTITIES RESPONSIBLE FOR GUARDIANSHIP AND PUBLIC ADMINISTRATOR COSTS

Section 1 of 2011 House Bill No. 1199 specified that the study of guardianship services for vulnerable adults must include “the entities responsible for guardianship costs.”<sup>85</sup> States generally provide for state funding or county funding of public guardianship costs, but North Dakota takes an unusual hybrid approach.<sup>86</sup> Entities responsible for guardianship and public administrator costs in North Dakota have included general fund appropriations to the Department of Human Services (Developmental Disabilities Division, and Aging Services Division) to contract with an entity to create and coordinate a unified system for the provision of guardianship services (a) to vulnerable adults who are ineligible for developmental disabilities case management services, and (b) to individuals

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82. Teaster et al., *supra* note 71.

83. Burley, *supra* note 72, at 16, 19, 20.

84. Guardianship Project, *supra* note 73 (nursing home avoidance among Medicaid clients, hospital avoidance among Medicaid clients, mental health facility cost avoidance among Medicaid clients, delayed spend-down/Medicaid avoidance, and Medicaid liens paid).

85. North Dakota Legislative Council, Study of Guardianship Services—Background Memorandum (2011).

86. See, e.g., TEASTER ET AL., *supra* note 33.



**House Bill 1354**  
**House Human Services Committee**

**Testimony Presented by Cynthia M. Feland**  
**District Court Judge**  
**February 2, 2021**

Chair Weisz, members of the House Human Services Committee, My name is Cynthia Feland, District Court Judge in the South Central Judicial District and chair of the Guardianship Workgroup. In the fall of 2013, the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by then Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. As part of that evaluation, the Workgroup also considered the 2012 Windsor Schmidt Report from the legislative “Study of Guardianship Services for Vulnerable Adults in North Dakota”. In his report, Mr. Schmidt made a number of recommendations to improve guardianship service in North Dakota.

Over the last three legislative sessions, the Workgroup has proposed and the legislature has adopted a number of statutory amendments to improve and strengthen procedures in guardianship and conservatorship cases. The statutory amendments adopted in those legislative sessions addressed all but one of the recommendations in Windsor Schmidt’s report: the lack of a system in North Dakota to provide for public guardian services for all eligible incapacitated persons similarly, and not particular public guardian services for particular diagnoses or categories.

During his report to the member of the Human Services Committee in May of 2012, Windsor Schmidt noted that there were a total of 2,038 guardianship and conservatorship cases in North Dakota in 2010, averaging approximately 311 new appointments each year. Flash

forward ten (10) years, there are a total of 3,264 guardianship and conservatorship cases in North Dakota through the end of 2020, reflecting much higher average yearly new case filings than overserved at the time of the Windsor Schmidt Report. A review of the new guardianship and conservatorship case filings for that last four years reflects an average of 427 new cases per year (483 new cases in 2017, 492 new cases in 2018, 399 new cases in 2019, and 335 new cases in 2020.) However, these current case numbers do not reflect all of the cases where guardian services are needed. Rather, the current case numbers only reflect those cases where a proposed guardian was identified, a petition for guardianship filed, and a guardianship was ordered by the court.

Not reflected in the current number of cases are the number of individuals who are currently on waiting lists for guardianship services provided by professional guardians like Catholic Charities, Guardian Angels, and Guardian and Protective Services. According to the Windsor Schmidt report, in 2012, just one of the professional guardians, Catholic Charities, was facing a waiting list of 25. Today, Catholic Charities' waiting list surpasses 90.

In addition to those on waiting lists, there are a number of individuals admitted to the hospital following possible neglect or abuse reports to protection groups and law enforcement who are in need of a guardian. These individuals often remain hospitalized longer than necessary or are re-admitted to the hospital due to their inability to provide care for themselves, or not having another person to ensure that they receive proper care following discharge. In situations where the individual remains incapacitated and unable to continue to reside in their home, admission to a care facility becomes problematic, again lengthening their hospital stays.

Professionals in both the medical and long-term care fields noted that it is shocking to see how many individuals have nobody in their life to turn to for assistance. A survey of care facilities conducted by the Guardianship Workgroup with the assistance of the Department of Human Services reflected that there are approximately 124 individuals in care facilities that are in need of a guardian, for which no one is available to serve as guardian.

The need for guardians is further compounded by the number of existing cases where the current guardian, appointed years ago for an adult child with developmental disabilities or a traumatic brain injury, is no longer able to serve as guardian and may themselves be in need of a guardian. Implementation of the review process for existing guardianship and conservatorship cases following the 2015 legislative session, highlighted the increasing demand for guardian services.

With the need for guardian services growing and the lack of public guardian services to fill the need, stakeholders in the guardianship process have found themselves in untenable situations. Protective services have asked neighbors to step in and manage a non-relative's affairs. Sheriffs have sought out community members to take on the role of guardian, sometimes on a temporary basis while continuing to search for a more permanent solution. Most difficult are those situations where a guardian has been removed due to exploitation issues, or in some instances death, with no mechanism for identifying a replacement. In the direst situations, professional guardians have stepped up and agreed to take on the case without being provided any additional compensation.

To address the ongoing issues involving individuals who are in need of a guardian but do not have willing or responsible family members or friends available to serve as a guardian, a subcommittee of the Guardianship Standards Workgroup was formed in October of 2019. In discussing the best resolution to address the growing need for guardian services, the Subcommittee on Guardianship Services, comprised of legislators, interested community stakeholders and members of the Guardianship Workgroup, reviewed the four models for providing public guardian services identified in the Windsor Schmidt report: (1) court model, (2) independent state office, (3) division of a social service agency, and (4) county model; and reviewed guardian service programs in other state. An independent state office, modeled after the North Dakota Commission on Legal Counsel for Indigents, was determined to be the best model for the timely and effective delivery of public guardianship services in North Dakota. Travis Finck, Director of Indigent Defense Commission, served on the subcommittee and was instrumental in drafting the bill before you.

The proposed amendments contained in House Bill 1354, creates the North Dakota Commission on Guardianship to provide guardianship services for all eligible incapacitated persons in North Dakota and oversight of appointed guardians.

### **Section 1**

Page 1, line 8-10, amends subsection 2 of N.D.C.C. §28-32-01 to add subdivision z exempting the guardianship commission from the term administrative agency. The exemption provides the commission with more flexibility to set and change standards as needed. The types of policies needed to govern guardians contracted with the commission do not fit well within the



Administrative Practices Act and are similar to those implemented by the Indigent Defense Commission and other agencies in the list of exemptions. The types of policies or standards needed to govern the guardianship commission are discussed further on in the bill under section 54-67-03, Commission Responsibilities.

## **Section 2**

Page 2, line 10, amends subsection 1 of N.D.C.C. section 50-24.1-07 to allow the state to recover the commission's funding for guardianship services prior to the state having to share a portion with the federal government. If the Department of Human Services collects a Medicaid claim, the federal government received approximately 50% of that claim.

**Section 3** - creates Chapter 54-67 establishing the Commission on Guardianship.

Page 2, line 14 through Page 3, line 9, creates **Section 54-67-01 Definitions**, providing the general definitions for the chapter. Similar to the operation of the Indigent Defense Commission, "contract guardian" is defined as the person, individual or organization, contracted with by the commission to provide guardianship services as opposed to an individual who may be employed as a guardian by the commission to provide guardianship services. The definition for "Identifiable information" specifies the personal information collected by the commission on an individual that would be confidential under section 54-67-06 below.

Page 3, line 10 through Page 4, line 20, creates **Section 54-67-02 Membership**, establishing the purpose of the commission, composition of the governing board and their respective terms.

Under subsection 1, the Guardianship Commission is responsible for developing and monitoring a process for the delivery of state-funded guardian services including the standards and policies governing eligibility for guardianship services.

Subsection 2 identifies the membership of the Guardianship Commission. After consideration of the members comprising the Indigent Defense Commission and guardianship commissions in other states; some of which were as large as 15 members, the Workgroup Subcommittee is recommending a 10 member governing board.

In addition to the recommended appointments by the governor, legislature, and Supreme Court, the remaining four board members were selected based on their expertise and the invaluable insight their respective organizations would provide to the Commission. A member of the protection and advocacy project was selected based on their involvement with both mental health and developmental disabilities as well as their initiative on the supportive decision making legislation last session. Two members from the Department of Human Services, one from the Adults and Aging Services Division, and the other from the Developmental Disabilities Division were selected due to their role concerning the Vulnerable Adult and Protective Services program's involvement with PASS funds and programming within the realm of disability services. After discussions on the inclusion of a professional and a family guardian on the Commission, the Workgroup Subcommittee ultimately determined that a member from the Guardianship Association of North Dakota should be included as they represent professional guardians, families, and others committed to representing the unmet needs of people too vulnerable to speak for themselves.

Subsection 3 provides the deadline to make initial appointments to the Commission.

Subsection 4 governs the terms of membership. The length of initial terms are modified, staggering future appointments to allow for retention of experienced commission members. It is anticipated that the administrative work and legal work would be handled similar to that for the Indigent Defense Commission with one administrative assistant to perform administrative duties and an assistant attorney general assigned to perform the legal work.

Subsection 5 provides guidance concerning the qualification of individuals considered for appointment to the commission as well as those who are excluded from appointment. Given the inherent conflict of interest, judges and employees of a judge would not be eligible to be members.

Subsection 6 covers compensation and financial reimbursement. Members will not receive compensation for serving on the commission. However, members will be entitled to receive reimbursement for reasonable and necessary travel and expenses such as food, lodging and mileage incurred in performing their commission duties. Following discussions with legislative counsel legal staff, legislative members on the commission would be reimbursed by legislative council.

Subsection 7 establishes the date and procedural mechanism for conducting the first commission meeting. After that first meeting, commission members will have 30 days to select a chair who will thereafter be selected annually.

Page 4, line 21 through Page 6, line 14, creates **Section 54-67-03. Commission Responsibilities** outlining the duties of the commission regarding delivery, management, and oversight of guardianship services.

Subdivision a requires the commission to develop standards for delivering guardianship services including the qualification of contract guardians and guardians, their caseload ratios, training, evaluations, and compensation; handling of conflicts of interest, and any other standards necessary and appropriate to ensure the delivery of adequate guardianship services.

Under subdivision b, the commission is required to develop the eligibility requirements to determine whether an individual qualifies to receive services under this chapter. For individuals determined to be eligible for services, the state will have a preferred claim against the individual's estate in the event the estate is able to provide reimbursement. The preferred claim provision is similar to the estate recovery processes used by the Department of Human Services (DHS) and was drafted with the assistance of the DHS attorney on the Workgroup Subcommittee.

Subdivision c requires the commission to develop the process to be used to contract with persons to provide guardian services. It is anticipated that a process similar to the Indigent Defense Commission would be established with a central office managing "contract guardians".

While it is not anticipated that regional offices would be established, the Workgroup Subcommittee included subdivision d to allow for future discussion if a regional office was



determined to be necessary and appropriate at some point in the future due to the unavailability of “contract guardians” to cover a specific geographic area.

The commission is also responsible for establishing a method for monitoring and tracking the caseloads of contract guardians under Subdivision e and to submit a biennial budget to Office of Management and Budget under subdivision f.

Under subdivision g, the commission would be required to take steps necessary to enable the acceptance of private, federal and public funds to support the guardian services. This provision would allow the commission to accept, hold and appropriately use bequests from individuals, families, or private organizations wishing to financially support guardian services.

Subdivisions h and I provide the commission with authority to enter into contracts necessary for providing guardianship services.

Subsection 2 requires the commission to adopt rules in a manner generally consistent with the notice and comment provisions of the Administrative Practices Act. So, while it is exempt from having to establish rules under that the Administrative Practices Act, the public notice and comment requirements will still apply.

Page 6, line 15 through Page 7, line 9, creates **54-67-04. Commission Director Responsibilities – Report to Legislative Management**, establishing the qualification and duties for the director of the commission. The proposed provision allowing for a candidate to become nationally certified within one year of appointment was included to provide the commission with the flexibility to consider candidates possessing all of the other qualities deemed appropriate for the

position. Requiring a candidate to be nationally certified at the time of application would drastically reduce the number of otherwise qualified candidates. Currently, there are only 19 certified guardians in the state.

In addition to assisting the commission with developing standards for the delivery of adequate guardianship standards, the director would be responsible for administration and implementation of guardianship services and supervising compliance with commission standards. The director would also be responsible for preparing and presenting an annual report of the commission's activities, needs and costs to both the commission and the legislative counsel.

Page 7, lines 10-15, creates **54-67-05. Guardianship Fund – Continuing appropriation,** creating a special fund to hold the funds collected under section 54-67-03 and provides for a continuing appropriation to the commission for use in administering the program.

Page 7, line 16 through Page 8, line 19 creates **54-67-06. Accessibility and Confidentiality of Records,** specifying the specific information that will be classified as confidential and the limited situations and personnel who may be granted access to the otherwise confidential records. The proposed provision was modeled after the Department of Human Services' confidentiality and access statute.

Under subsection 1, "identifiable information" of individuals applying for or receiving guardianship services is confidential. "Identifiable information" is defined in the first section of the new chapter (Page 2, line 25 through Page 3, line 9) and includes the individual's name,

address, phone number, fax number, social security number, e-mail address, program ID, and any other unique identifier. Exceptions allowing disclosure of certain information such as the individual's social security number are authorized when it is necessary for administration of the program or required or allowed under law.

Subsection 2 requires any vendor, agent or contractor to agree to keep the "identifiable information" confidential and to only use the "identifiable information" as provided in an agreement with the commission.

Under subsection 3, reports concerning an applicant, a provider of, or an individual applying for or receiving services under the program are also confidential but may be disclosed in the limited circumstances identified in subdivisions a through d.

Subsection 4 contains a penalty clause for disclosure of confidential information in violation of the section. Disclosure of confidential information provided to a government is classified as a class C felony under Section 12.1-13-01.

**Fiscal Impact:**

The fiscal impact for this bill only relates to the formation and operation of the commission. This legislative body will see two other bills this session that provide funding for guardianship services: HB 1012 and HB 1015. HB1012 is the DHS budget which includes funding for the Guardianship Establishment program and guardianship services for those with developmental disabilities. HB 1015 is the Governor's budget which provides for funding of the PASS program.

The Establishment Fund is used to pay for the costs associated with filing a petition for guardianship. Anyone seeking to petition for guardianship may apply for Establishment Funds if the proposed ward is eligible for Medicaid and/or has financial resources less than 100% of the federal poverty guidelines. To meet the poverty criteria, an individual's income must be less than \$13,000 per year. Family members seeking guardianship of an individuals with developmental disabilities (DD cases) are not eligible for petitioning costs through the Establishment Fund.

A small amount of funds are available to Catholic Charities for the petitioning costs associated with establishing a guardianship in DD cases. In addition, DHS oversees funds to provide guardianships services for DD cases through a contract with Catholic Charities. All DD cases accepted by Catholic Charities under the contract must be referred through the Human Service Centers.

PASS funds provide for guardianship services of non DD cases which meet the federal poverty guidelines.

While the Workgroup Subcommittee discussed that bringing all guardianship programs under one umbrella would be logical, at this time the different funds for all of the current guardianship related programs must remain separate to ensure that they are funded regardless of the status of this bill.

Respectfully Submitted:

Cynthia M. Feland  
District Judge, South Central Judicial District  
Chair, Guardianship Workgroup

Subcommittee on Guardianship Services Members: Judge **Cynthia M. Feland**, Chair; **Senator Judy Lee**, West Fargo; **Senator Timothy Mathern**, Fargo; **Representative Kathy Skroch**, Lidgerwood; **Representative Jon Nelson**, Rugby; **Jon Alm**, N.D. Department of Human Services; **Travis Finck**, Director, Indigent Defense Commission; **Shelly Peterson**, North Dakota Long Term Care Association; **Marnie Walth**, Sanford Health; **Angie Sersha**, Sanford Health; **Tim Blasl**, North Dakota Hospital Association; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Mason Sisk**, Governor's Office; **Michelle Gayette**, N.D. Department of Human Services; **Sally Holewa**, State Court Administrator; and **Audrey Urich**, Guardian and Protective Services.

**House Human Services Committee**

Testimony on House Bill 1354

Representative Robin Weisz – Chairman

February 2<sup>nd</sup>, 2021

Chairman Weisz and members of the House Human Services Committee, my name is Donna Byzewski and I am the Program Director of the corporate guardianship program for individuals with intellectual disabilities at Catholic Charities North Dakota. I am respectfully asking your committee to support HB 1354 which authorizes the creation of a Commission on Guardianship.

For more than 33 years, the Developmental Disabilities (DD) Division of the North Dakota Department of Human Services has contracted with Catholic Charities ND to provide guardianship services on behalf of individuals with intellectual disabilities. Our current contract provides funding for guardianship services for 489 individuals. In February 2020, our agency also began providing guardianship services on behalf of individuals with mental health issues, vulnerable elderly persons and people with a traumatic brain injury and this program receives funding from Public Administrators Support Services (PASS).

The Commission on Guardianship will have many positive impacts on professional and non-professional guardianship services in North Dakota. The important and complex work of the members of the Commission will shape the direction of guardianship services in North Dakota for years to come as they hire a director, create standards for the delivery of guardianship services, establish standards of evaluation of contract guardians and guardians employed by the Commission, determine caseload standards for contract guardians and guardians employed by the Commission, develop a process to contract with guardianship service providers and other significant responsibilities. Carrying out these responsibilities is no small task for the Commission and a significant amount of time will need to be devoted to creating the Commission from the ground up and fulfilling the responsibilities that are laid out in HB 1354.

I have two points that I would like to bring up for your consideration. The first point is regarding the Commission's responsibility to contract with guardianship service providers. It is our understanding that all guardianship funding (corporate guardianship funding through the DD



Division of DHS and PASS funding through OMB) would be transferred to the Commission. Because the Commission will not be meeting for the first time until September 2021, I have much anxiety about the Commission being able to issue our contract prior to July 2021 (our current contract with the DD Division ends on 6/30/21). Our guardianship program nor PASS providers would be able to function without funding until the Commission is up and running and has a Director to carry out these duties. I am respectfully asking that the Human Services Committee consider approving the Commission on Guardianship but tabling the transition of corporate guardianship funding from the DD Division of DHS and PASS funding from OMB until the following biennium. This will give the Commission time to create solid processes and procedures for a smooth transition of funding from DHS and OMB.

The second point that I would like to address relates to the Commission's ability to directly employ professional guardians. Instead, I propose that already existing contracted guardianship service providers be given priority over guardians employed by the Commission. Historically, funding has been limited for our guardianship services. If adequate funding is available through the Commission, current guardianship service providers would jump at the chance to expand their services and service area.

I have been a corporate guardian with Catholic Charities ND for 31 years and, throughout this time, many people have dedicated an incredible amount of time and talent to improve guardianship services in North Dakota. This is one of the most exciting but nerve wracking times for guardianship service providers. A Commission on Guardianship would be helpful to bring all professional and contract guardians to an equal and high level of service by always focusing on best practice. Because we are responsible for the wellbeing of vulnerable adults, having a professional or contract guardian who is only adequate is not acceptable. I strongly encourage that the first two years of the Commission be utilized to get processes and procedures in place. The contract for corporate guardianship services would remain with the DD Division and PASS funding would remain with OMB for the next two years at which time, funding and services would be smoothly transitioned to the Commission on Guardianship, if appropriate.

Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

Human Services Committee

Testimony by Audrey Uhrich, Program Director,  
Guardian and Protective Services (GaPS) Bismarck, ND  
February 2, 2021

Chairman Wiesz and members of the Human Services Committee, I am Audrey Uhrich. I am the Program Director for Guardian and Protective Services, a non-profit agency that is appointed by the court to serve as a guardian for vulnerable adults.

Our State is facing challenges in guardianship services. There is a great need for well-qualified guardianship providers to assist vulnerable adults by serving as guardian. A Guardianship Commission, as laid out in this bill, is a great step towards strengthening guardianship in North Dakota and ensuring that guardians are well-trained, available, and held accountable for the services they provide.

Guardian and Protective Services and other public guardian agencies across the State welcome the opportunity to help more individuals in need of a guardian. Our agency currently has 19 individuals on our wait list in need of a guardian. The number of people needing assistance continues to increase. As fast as we can respond, more individuals are referred to us - in January alone we added 9 people to our wait list. It is our hope that the Guardianship Commission can set the foundation to streamline availability of guardianship providers and develop a strong reimbursement process to ensure that all guardianship providers have enough staff available to meet the growing demand for guardianship services.

Guardians are an essential piece in the continuum of care for vulnerable adults. Please ensure that our state addresses this important need by approving this bill.

Thank you for your time and consideration.



**House Human Services Committee**  
**Representative Robin Weisz - Chairman**  
**Testimony per House Bill 1354 | February 2, 2021**

Chairman Weisz and Members of the House Human Services Committee, my name is Margo Haut. I am Founder & Director of “Guardian Angels, Inc”, a nonprofit corporation established in 2014 located in Jamestown serving throughout ND. I come before you, today to testify and respectfully request your support of House Bill 1354.

Prior to the launch of Guardian Angels, Inc. I assisted a dear friend with her son who was in crisis due to a severe mental illness. Upon resolve, my friend had an inquiry that has stayed with me “what happens to those people that have nobody?” At the time, I did not have an answer...today, I do! The hope would be to have access to a Guardian.

I share this experience, as it was instrumental in the founding of Guardian Angels, Inc. Our slogan is “Putting People First” with the vision of providing services, being available 24/7 and giving a voice to those who cannot advocate for themselves. Serving as Guardian for our Protected Persons is the most challenging yet rewarding work I’ve done.

From my perspective, the consideration of the Commission on Guardianship presented in HB 1354 is a step in the right direction. The Commission on Guardianship would be the oversight needed to ensure training for the National and State certifications, availability to meet the requirements such as monthly face to face visits but when all is said & done, accountability for the services provided to our Protected Persons crucial in their vulnerable time of need.

Strong efforts are made by Guardian Angels, Inc. to maintain these principles. As President and Member of GAND- Guardianship Association

of ND, I've had the opportunity to establish professional working relationships with the Guardianship Entities of active GAND Board Members. I can assure You these Entities mirror the same efforts of Guardianship Services.

One other area of similarity for Entities of Guardianship Services throughout ND are Referrals that occur on a regular basis. Currently, Guardian Angels, Inc. has seven individuals on our waiting list. As previously mentioned, communication and/or collaboration occurs amongst the Guardianship Entities of active GAND Board Members, this includes the availability to meet the current need of Guardianship Services.

I reiterate that Guardian Angels, Inc. is in support of HB 1354. With it, comes much needed change. Because of it, apprehension. Ultimately, there's People behind the Paper. It is my hope that we do not lose sight of this fact nor deter the success Protected Persons have experienced not only with Guardian Angels, Inc. but several Guardianship Entities throughout ND.

Chairman Weisz and Members of the House Human Services Committee  
I respectfully ask support of House Bill 1354.

Thank you for your time and consideration.

#4790

**House Human Services**  
**Rep. Robin Weiss, Chair**  
**Feb. 2, 2021**  
**HB 1354**

Good morning, Chairman Weiss and members of the committee. My name is Maggie Seamands and I am the executive director for critical care and bed management for Sanford Health Bismarck. Thank you for the opportunity to speak with you this morning.

In my bed management role, I oversee our patient discharge process, ensuring that our patients are sent home safely or transferred to another level of care needed by the patient. We work closely with the patient and their family members to ensure smooth transitions of care. But when a patient who is unable to make decisions for themselves and he or she does not have anyone qualified to make decisions for them, patients unfortunately are left stranded in a hospital bed long after they are ready to move on. In a perfect world, the process of assigning a vulnerable individual the guardianship services they need would take a few days to a week. Currently, the process takes 30-90 days.

These situations present many challenges for the patient and the hospital. When the patient is ready for discharge, but awaiting guardianship services, the bed is not available for another patient who needs it. While the patient remains in limbo, there is no one to instruct the hospital in care decisions. Hospitals cannot employ or choose guardians directly because the guardian could be viewed as lacking the necessary independence to make decisions, as required by law.

As an example, last fall (Oct. 1) we admitted a young man who needed hospitalization and then was ready to be transferred to a more appropriate level of care. Because the family member who was making decisions for him did not have the mental capacity to do so, we applied for guardianship services Oct. 22. We were able to discharge the patient Jan. 13 to the level of care he needed, but the guardianship services were still pending. The delayed transfer is not good patient care and it's not good for the patients who were denied a hospital admission at Sanford because that bed was filled for nearly three months with an individual that did not have medical necessity. (Hospital capacity was nearly 100% for every hospital in the state in the months of October, November and December.)

There is no blame to be placed, only the recognition that we need to do a better job for these patients. Establishing guardianship is a complex challenge, complicated further by a lack of standardized processes and difficulty finding qualified guardians.

By establishing a Commission on Guardianship and state-funded guardianship services, HB 1354 addresses these barriers and takes a giant step towards more efficiently connecting vulnerable patients to the services they need. By developing competencies and training, the Commission—a group of content experts and vested policy makers—will help ensure access to guardians who are qualified to make decisions that are in the vulnerable individual's best interest.

Thank you for your time and your consideration. I would be happy to answer any questions.

Maggie Seamands,  
Executive Director  
Sanford Health Bismarck  
[Maggie.Seamands@SanfordHealth.org](mailto:Maggie.Seamands@SanfordHealth.org)  
701-323-8051

**House Human Services Committee  
67<sup>th</sup> Legislative Session  
Representative Robin Weisz-Chair**

Chairman Weisz and House Human Service Committee,

Please accept this testimony in a support of HB 1354. I applaud and welcome the establishment of a commission on guardianships. This is a concern to me as the Commissioner of Veterans Affairs because ND Veterans have guardianships appointed to them and I am aware of the current lack of resources such as funding and providers.

While there are several entities currently involved in various guardianship programs having a commission and eventually a director will provide a single point of contact for the coordination of these programs. A commission can provide a clear overview of the need for these services as well as develop plans to address those needs.

While I support HB 1354 I feel it necessary to point out that these programs are currently under funded.

- The Guardianship Grants funding appropriation through HB 1015 is at a governor recommendation of \$1,950,000. The real need is at \$2,500,000 a shortfall of \$ 550,000.
- HB 1354 requires funding of \$437,000 from sources not clearly identified in the bill. I ask this committee to ensure the \$1,950,000 for guardianships is not utilized for the commission and director expenses.
- I would urge the proper funding of the guardianship programs during the 2021-2023 biennium.

**The Guardianship programs protect the most vulnerable of ND Citizens. These programs should be the highest priority for ND Legislators to fund.**

Please feel free to reach out to me with any questions or concerns.

Thank you for your consideration,

Lonnie Wangen  
Commissioner: NDDVA  
4201 38<sup>th</sup> Street S Suite 104  
Fargo ND 58104  
701-239-7165  
[lwangen@nd.gov](mailto:lwangen@nd.gov)



**2021 HB 1354**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**February 2, 2021**

Chairman Weisz and members of the House Human Services Committee, I am Melissa Hauer, General Counsel of the North Dakota Hospital Association. I testify regarding 2021 House Bill 1354 and ask that you give this bill a **Do Pass** recommendation.

The bill would create a Commission on Guardianship to develop and monitor a process for state-funded guardianship services for individuals determined by a court to be eligible for services in accordance with the standards and policies of the commission. The bill would provide a continuing appropriation for these guardianship services.

This bill is a step in the right direction to creating a more organized and comprehensive system to help vulnerable adults in need of guardianship services. With increasing frequency, hospitals encounter patients who need someone to make medical decisions for them, but because the patient does not have a power of attorney or any family or friends who are willing or able to make those decisions, the only resort is to ask a court to appoint a guardian. We believe this situation is only going to increase due to our aging population and more mobile society where people lose touch with family members who may live thousands of miles away.

To tell you more about the bill and why it is important for hospital patients, I would like to introduce Maggie Seamands, a registered nurse and board-certified case manager at Sanford Health in Bismarck. We ask that you give this bill a Do Pass recommendation. I would be happy to try to answer any questions you may have before I turn it over to Maggie. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel  
North Dakota Hospital Association

40 1354

**From:** Jeanne < >

**Sent:** Sunday, January 31, 2021 8:15 PM

**To:** Skroch, Kathy <[kskroch@nd.gov](mailto:kskroch@nd.gov)>

**Cc:** Rebecca Anderson

**Subject:** Re: Behavioral Health Alerts, January 15, 2021

(To the ND Human Services Committee, ^7<sup>th</sup> Legislative Session)

Our entire last year is a textbook perfect example of what people with a serious mental health diagnosis go through once they commit a crime.

Last May 5 th, 2020 XXXXXX said he shot up with the most Herouin he has ever used. The next day, May 6 th, 2020, he walked from N FARGO to Thrifty White in West FARGO to get his monthly shot of 400 mg of Abilify Maintana. He then went to his favorite tobacco store to buy tobacco. He had asked me to put \$60.00 on his debit card from the Social Security Disability account. He paid for one pouch of tobacco and shop lifted two other pouches. He left the store and the owners son came after XXXXXX aggressively and police were called. XXXXXX's escalation resulted in punching the officer. He was handcuffed and charged with robbery in the Cass County Jail. In a way this was the perfect storm of a large quantity of legal and illegal drugs. In his system. XXXXXX's attorney thought the Abilify may have caused impulsivity. XXXXXX was incarcerated pending a Psych. Evaluation. This was done and he was considered to not be, "reality based." This was after two months in jail and taking oral Abilify. On July 15, 2020, XXXXXX was released from jail on his own personal recognizance. He was discharged to the street. He stayed with friends, slept outdoors at Concordia College.

On August 7, 2020, the Cass County Sheriff called to see if I would transport XXXXXX to the Jamestown State Hospital. They could not because he was out on P. R. His attorney told me that he was committed for a year and that he needed to be deemed competent to understand the charges against him. On August 28th, 2020, XXXXXX was discharged from the State Hospital and deemed "competent." The State Hospital Social Worker, /////, was trying to establish a discharge plan. This is when we learned that there was no commitment order. ///// said that they can no longer discharge to the street as of a new Court Order of Governor Burgum. The hospital transported him to S.E.Human services and dropped him off. Again he was homeless. XXXXXX was trying to find places nightly. He did not want to stay with family, nor did we think we could handle it. As it got colder, (sub-zero temperatures) we tried renting a room at the Rodeway Hotel on a monthly rate. He was asked to leave after approximately three weeks because he had other homeless people in the room. Once again he is in the street. I called his attorney's office to see if they could speed up the hearing. I was told how busy they are and a lot of their clients are homeless, and added that is not their responsibility.

XXXXXX stayed with friends at his Mom's apartment. His Mom was sent to Sanford Psych and XXXXXX invited homeless people in once again. His Aunt Becky planned to pick him up for an appointment with his lawyer. It took him two hours to get ready and once at the attorney's office, XXXXXX was tackled by another attorney as he picked up pens and paper. Another escalation of events. They rescheduled for the next day on a Zoom call. Becky again picked XXXXXX up at his Mom's apartment. This day XXXXXX was decompensating from the day before and his attorney asked Becky to take him to Prairie for an Eval. I called ahead and was talked to abruptly. Prairie sent Becky with XXXXXX to the Sanford Urgent



Care for medical clearance. They placed him on a 24-hr hold and transported him by Law Enforcement, handcuffed, back to Prairie. Now we think we are getting somewhere and that XXXXXX is safe. The next day we are told that he checked himself out. On an (A.M.A.), Against Medical Advice! How is this even possible in a Psychiatric setting. What about Governor Burgum's order? Does that only apply to Jamestown? Again, there is no discharge plan and XXXXXX had only slippers on when he left. I tried to file an emergency guardianship and I filed a Vulnerable Adult report. At 4:15 that Friday I received a call that they would help me the following Tuesday to file the guardianship (application) (four days beyond the current crisis). It was a long weekend due to Martin Luther King Holiday. I left town, so Becky has pursued the emergency guardianship. Again XXXXXX is homeless, he cannot go back to his Mom's. Our safety net evaporated. So now we wait for the final hearing that is set for February 17, 2021. It is very cold in Fargo ND in January!! If any legislative committee can find a way to help this very vulnerable population, it will be life changing and life-saving for certain!

Sincerely,

Jeanne Anderson,

(XXXXXX's grandmother, adoptive Mom since age 13, and his Soc. Sec. Representative Payee)



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1354  
2/8/2021

Relating to the commission on guardianship and exempt administrative agencies; to provide a penalty; to provide for a legislative management report; and to provide a continuing appropriation

**Chairman Weisz** opened the committee meeting at 5:23 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Salaries & benefits
- Expenditures
- New commission
- Court-appointed guardian

**Rep. Kathy Skroch (5:24)** moved **Do Pass Rerefer to Appropriations**

**Rep. Gretchen Dobervich (5:24)** second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	N
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y

Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	N

**Motion Carried Do Pass Rerefer to Appropriations 12-2-0**

**Bill Carrier:** Rep. Kathy Skroch

**Chairman Weisz** adjourned at 5:28 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1354: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1354 was rereferred to the **Appropriations Committee**.

**2021 HOUSE APPROPRIATIONS**

**HB 1354**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Brynhild Haugland Room, State Capitol

HB 1354  
2/12/2021

Relating to the commission on guardianship and exempt administrative agencies;
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**9:30 Chairman Delzer** – Opened the meeting for HB 1354

Attendance	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	A
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	P
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	A
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	P
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

### Discussion Topics:

- Guardianship
- New Commission

**9:31 Representative Weisz-** Introduces the HB 1354 and testifies in favor

**Additional written testimony:** No Written testimony

**9:37 Chairman Delzer-** Closes the meeting for HB 1354

*Risa Berube, House Appropriations Committee Clerk*

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Brynhild Haugland Room, State Capitol

HB 1354  
2/18/2021

Relating to the commission on guardianship
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**6:38 pm Chairman Delzer-** Opened the meeting for HB 1354

Attendance	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	P
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	P
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	P
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	A
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

### Discussion Topics:

- Guardianship committee

**6:39 Chairman Delzer** Reviews the bill

Committee discussion

**Additional written testimony:** No Written testimony

**6:54 Chairman Delzer-** Closes the meeting for 1354

*Risa Berube,*

*House Appropriations Committee Clerk*

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Brynhild Haugland Room, State Capitol

HB 1354  
2/19/2021

relating to the commission on guardianship and exempt administrative agencies; to provide a penalty; to provide for a legislative management report

**10:17 Chairman Delzer-** Opened the meeting for HB 1354

Attendance	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	P
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	A
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	P
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	P
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

### Discussion Topics:

- New commission
- Guardianship

**10:20 Representative Vigesaa** Do Not Pass

**Representative Meier** Second

**10:21 Roll Call Vote** was taken;



<b>Representatives</b>	<b>Vote</b>
Representative Jeff Delzer	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Tracy Boe	A
Representative Mike Brandenburg	Y
Representative Michael Howe	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	N
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Jim Schmidt	Y
Representative Randy A. Schobinger	Y
Representative Michelle Strinden	Y
Representative Don Vigasaa	Y

**Motion Carries; 19-1-1 Representative Meier will carry the bill**

**Additional written testimony:** Testimony was submitted but not addressed (**testimony #6993**)

**10:22 Chairman Delzer-** Closes the meeting for HB 1354

*Risa Berube,*

*House Appropriations Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1354: Appropriations Committee (Rep. Delzer, Chairman)** recommends **DO NOT PASS** (19 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1354 was placed on the Eleventh order on the calendar.



# North Dakota Legislative Council

Prepared for the House Appropriations Committee  
LC# 21.9647.01000  
February 2021

## STATE AGENCY GUARDIANSHIP PROGRAMS - FUNDING

The schedule below identifies agencies with funding for guardianship-related programs. The schedule identifies the agency, provides a brief description of the program, the base budget of the program, funding source, and the executive recommendation for the 2021-23 biennium. House Bill No. 1354 under consideration by the Legislative Assembly creates a Commission on Guardianship which has the responsibility of establishing and maintaining guardians, guardianship standards, training, and recordkeeping for individuals determined by the court to be eligible for services. The bill also creates a guardianship fund from money appropriated and collected by the commission excluding funds held as trustee. The bill provides a continuing appropriation and the fiscal note indicates a \$437,000 increase in general fund expenditures.

Agency	Program	Funding Source	Base Budget	Executive Recommendation
Office of Management and Budget	Guardianship grants to private agencies and individuals who serve as public guardians for vulnerable adults.	General fund	\$1,950,000	\$1,950,000
Judicial branch	Guardianship monitoring program which trains and monitors all guardians, including financial reviews and wellbeing checks.	General fund	283,042	288,504
Judicial branch	Guardian ad litem are used in child abuse and neglect cases and are appointed by the court.	General fund	1,395,794	1,395,794
Department of Human Services	Aging Services Division administers the guardianship establishment program which provides assistance to qualified individuals aged 18 or older.	General fund	352,500	352,500
Department of Human Services	The Developmental Disabilities (DD) Services Division contracts directly with Catholic charities to provide guardianship services to individuals who are receiving DD program management.	General fund	3,168,556	3,122,361
<b>Total</b>			<b>\$7,149,892</b>	<b>\$7,109,159</b>