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Report of the Work Group Pursuant to Resolve, Chapter 80 "To Develop a Plan to Improve Public Guardianship Services to Adults with Cognitive Disabilities"

Maine Developmental Disabilities Council

Public Guardianship Work Group

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**Maine Developmental
Disabilities Council**

**Report of the Work Group pursuant to
Resolve, Chapter 80**

**“To Develop a Plan To Improve Public
Guardianship Services to Adults with
Cognitive Disabilities”**

Submitted by:

**Maine Developmental Disabilities Council
On behalf of the
Public Guardianship Work Group**

**For additional information, please contact:
Julia Bell, Executive Director
139 State House Station
Augusta, Maine 04333-0139
jbelle@maineddc.org**

DEVELOPMENT OF PLAN TO IMPROVE GUARDIANSHIP FOR ADULTS WITH COGNITIVE DISABILITIES

A Report prepared pursuant to Resolve, Chapter 80, 125th Legislature

Presented to the Joint Health and Human Services Committee

I. Introduction

During the first session in 2011, the 125th Legislature enacted Resolve, Chapter 80, “To Develop a Plan To Improve Public Guardianship Services to Adults with Cognitive Disabilities.” This Resolve directed the Maine Developmental Disabilities Council to convene a stakeholder group to develop a working plan for a program for the transition of public guardianship responsibilities for adults with cognitive disabilities from the Department of Health and Human Services to an entity independent of that agency.

The Resolve directed that the development of the working plan should include consideration of models for provision in other states which separate public guardianship responsibilities from service coordination. The stakeholder group was directed to develop recommendations for the model that would be most appropriate for Maine to adopt, and to provide those recommendations and a working plan for transition to this model to begin July 1, 2012. The Resolve also specified that the report should identify any necessary statutory changes to enable implementation of the recommendations, and the fiscal impact of those changes.

As part of its work, the stakeholder group was also asked to consider and provide information in its report regarding the feasibility of merging the volunteer correspondent program, which is currently administered by the Maine Developmental Services Oversight and Advisory Board, into the proposed model for public guardianship.

Although the resolve identifies the population group under public guardianship as adults with “cognitive disabilities,” the list of organizations to be included in the stakeholders’ group and the assignment to the Developmental Disabilities Council led the group to assume that the target group was persons with intellectual disabilities or autism who are eligible for services under Title 34-B, Chapters 5 and 6. This was the focus of the stakeholders’ deliberations. However, as noted in the Recommendations section of this report, the key components of a public guardianship program that will assure high quality, effective services are delivered are applicable to provision of these services to the broader population of persons in Maine who may need this support.

II. Description of Stakeholder Group and Process

Resolve, Chapter 80 identified specific organizations that should be invited to participate in the stakeholder group to develop a working plan for transition of guardianship responsibilities for persons with cognitive disabilities to an agency separate from the Maine Department of Health and Human Services. The Maine DD Council (MDDC) contacted each of those organizations to invite their participation in the stakeholder group, and also provided information to other entities that expressed interest in the work that was to be undertaken by the group. All of the organizations named in the Resolve sent representatives to the initial meeting of the group in July, 2011. While some of the representatives changed during the series of meetings and some were unable to participate in every meeting, meeting notes were circulated to all participating organizations and input was provided and incorporated in the subsequent deliberations of the group. Most organizations participated in-person in each of the thirteen meetings that were held from July, 2011 through January, 2012.

The Stakeholder Group included representatives of the following organizations:

Disability Rights Center of Maine

Maine Association for Community Service Providers

Maine Developmental Disabilities Council

Maine Developmental Services Oversight and Advisory Board

Maine Probate Judges Assembly

Maine State Employees' Association

Office of Adults with Cognitive and Physical Disabilities Services (OACPDS) in
the Maine Department of Health and Human Services (DHHS)

Office of Advocacy, Maine DHHS

Office of the Attorney General**

Speaking Up For Us of Maine

**Note: Two representatives of the Office of the Attorney General participated in the meetings and provided information regarding legal considerations of the issues discussed, they did not express opinions on the policy issues discussed or participate otherwise in the formulation of recommendations.

The stakeholders' group collected and considered information regarding the administrative structures for provision of guardianship services for both the Adult Developmental Services program and in the Office of Elder Services for elderly persons and other persons with disabilities served by that office. During the tenure of this stakeholder group, the Maine DHHS undertook a reorganization of guardianship duties

for persons served by Adult Developmental Services to transfer and incorporate that responsibility to the Adult Protective Services unit within the Office of Elder Services. The stakeholder group was provided with information regarding this reorganization and incorporated this in its deliberations.

The stakeholder group also identified specific information to be collected regarding diverse administrative structures in other states for delivery of guardianship services, especially for persons with disabilities. Initial information regarding services in other states was collected by MDDC staff and members of the stakeholder group, and specific states were then selected to be evaluated in greater detail. Members of the group contacted some of the selected states to collect additional information. The group also arranged for a presentation via teleconference by a representative of the independent agency in New Hampshire that is responsible for public guardianship through a State contract.

Findings and recommendations were determined with input from all stakeholders in the group. In some instances noted in this report, specific information and wording were provided by one of the group members.

III. Description of Current Administrative Structure for Maine DHHS Guardianship Services for Adults

The separate administrative structure for provision of guardianship services for persons eligible under MRSA Title 34-B, Chapters 5 and 6 was established many years ago within the state agency that administered developmental and behavioral health services. This separate structure remained after the consolidation of the Department of Behavioral and Developmental Services and the Department of Human Services into one state agency in 2005, and was still the status quo at the time last year that Resolve Chapter 80 was passed by the Legislature and signed by the Governor.

Under this structure, the state employee within Adult Developmental Services assigned responsibility for case management services, known as the Individual Support Coordinator (ISC), also served in the role of public guardian. The administrative structure established and reinforced by Consent Decrees related to services for persons with intellectual disabilities and autism specified a caseload of no more than 35 consumers for each ISC, and specific duties on behalf of those consumers under public guardianship were absorbed within the ISC's workload.

Concern had been raised previously by advocates and was brought up during the stakeholder group's meeting regarding the potential conflict inherent in the same state employee serving in the role of guardian (and therefore the individual's primary advocate) and also as the Individual Support Coordinator representing the state agency. Additional information was solicited from the Office of Public Guardianship (OPG), OACPDS and the Office of Elder Services (OES), as well as advocates.

Since the date of the passage of this Resolve, there have been significant changes in personnel in the offices currently responsible for public guardianship of persons served by the Office of Adults with Cognitive and Physical Disabilities Services (OACPDS). Over forty percent of the state Adult Developmental Services staff in OACPDS have left over the past several months, and a transition to community case management services begun more than two years ago has continued. There has also been some restructuring of services within the state agency in anticipation of additional changes.

The following description of the restructuring underway within the Maine DHHS was provided by representatives of that agency who were members of the stakeholder group for this report:

The consolidation of the public guardianship and conservatorship programs of the Office of Adults with Cognitive and Physical Disabilities with that of the Office of Elder Services began in the fall of 2011. The initial restructuring places the management and supervision of both the Adult Protective Services Program and Public Guardianship and Conservatorship Program under the Director of Adult Protective Services, Karen Elliott. For the first time, these programs are unified and the goal is to have these programs operate and respond in a consistent manner.

Estate Management is an essential component of this program and staff from both Offices will be reporting to Probate Courts and managing assets in the same manner. This restructuring provides protected persons with consistent and transparent asset management and Court reporting.

The Department is committed to separating the case management function from the public guardianship function. However, the timetable for accomplishing this goal is dependent upon the specifics of anticipated, but not yet announced, Departmental reorganization.

Further restructuring will continue as DHHS responds to the ever increasing needs of the persons served for case management. To the extent possible, DHHS will look to continue referrals to Community Case Management agencies and separate the role of case manager from that of Public Guardian and/o Public Conservator representative.

IV. Review of public guardianship models in other states

The workgroup learned that administration of public guardianship programs varies widely among states due (but not limited to) to a variety of factors such as differing structures of probate courts, county versus state funding of health and human service programs and history of litigation and class action settlements. Guardianship programs in New Hampshire, Washington, Kansas, New Mexico and Cook County, Illinois were identified as having high quality or unique public guardianship programs or features.

State/Other Government Unit	Administrative structure	Notable characteristics	Stakeholder Group Notes
Kansas	Public instrumentality administers a statewide volunteer program that recruits, trains, and supports private guardians for persons who would otherwise have public guardians	Longstanding, effective statewide volunteer guardianship services.	<p>Volunteer program does not replace public guardianships: program completely, as it lacks the capacity to adequately serve persons with certain high level needs.</p> <p>Serves persons with all types of functional needs (i.e. developmental disabilities, mental health disorders, frail elderly, etc.)</p> <p>Estimated costs \$ 2 per person per day</p>
New Hampshire	State contracts with private agencies to provide guardianship services	Most “public guardianship” functions are contracted out, excluding the filing of guardianship petitions, which is done by the state agency	<p>Concern regarding cost</p> <p>Serves persons with all types of functional needs (e.g. frail elderly, developmental disabilities, mental health disorders, , etc.)</p> <p>Estimated costs of \$7 per person per day</p>

State/Other Government Unit	Administrative structure	Notable characteristics	Stakeholder Group Notes
New Mexico	Office of Guardianship housed under umbrella of New Mexico Developmental Disabilities Council	Provides publicly-funded contracts for “corporate guardians” and legal services, which include Petitioning Attorney, Guardian Ad Litem (GAL), and Court Visitor	All public guardianship functions for adults managed by this office. Waiting list maintained for services – dependent upon appropriation in State budget.
Washington	Office of Public Guardian resides in judicial branch of state government and contracts with regional providers.	Pilot program since 2007 in six counties, with outcome data available	a) Model not a good fit with the structure of and resources available to Maine probate courts. b) Serves persons with all types of functional needs (e.g. developmental disabilities, mental health disorders, dementia, etc.)

Additional information regarding each of these guardianship programs can be found at the following websites:

Kansas: <http://www.ksgprog.org/>

New Hampshire: <http://opgnh.com/>

New Mexico: <http://www.nmddpc.com/page/office-of-guardianship>

Washington: http://www.advocateresourcecenter.org/oppsguide/organization.192507-Washington_State_Office_of_Public_Guardianship

V. Findings of the Stakeholder Group

The workgroup is not aware of a formal policy or plan regarding the disposition of case management services provided for eligible individuals served by OACPDS. However, there has been a significant shrinkage in the pool of Individual Support Coordinators employed by DHHS. As case management increasingly becomes privatized, the inherent conflict in the role of case manager as public guardian is eliminated, as community case managers cannot perform guardianship functions.

The information obtained by the workgroup did not suggest a pattern of conflict in practice. Members shared the concern of the potential for conflict, particularly in absence of formal quality assurance measures and within the context of significant changes in personnel and ongoing budgetary shortfalls experienced by DHHS.

In light of these developments and concerned that recommendations be sustainable, the workgroup identified features and concerns it deemed critical in any discussion of the future of public guardianship.

Key principles which should be considered and reflected in determining the future of public guardianship for eligible individuals with intellectual disabilities and autism spectrum disorders:

1) The public guardianship entity shall:

- a) be free from conflict(s) of interest;
- b) be transparent;
- c) adequately serve those in need of public guardianship;
- d) include a quality assurance ("QA") component, including addressing guardian turnover;
- e) conduct activities to decrease the need for public guardianship, (including finding a suitable individual in the ward's life who with support, could replace the public guardian);
- f) provide technical assistance to private guardians;
- g) provide the least restrictive level of guardianship;
- h) if private, should NOT have the ability to petition for guardianship;

2) The public guardian shall have an ongoing responsibility to:

- a) develop intimate knowledge of the ward's capabilities, values, needs, desires, and preferences;
- b) assist the ward to attain legal decision-making capacity;

- 3) Changes to the administration of public guardianship shall not increase the demand for public guardianship; and**
- 4) A policy is needed regarding the role of Rep Payee for persons served by OACPDS.**

Further, the workgroup separated its recommendations addressing the stated goals of “separation of the service coordination for individuals with cognitive disabilities function from the public guardianship function for individuals who are wards of the State” and the “transition...of public guardianship responsibilities for adults with cognitive disabilities from the Department of Health and Human Services to an entity independent of that agency”.

Workgroup Recommendations

Workgroup Recommendations focused on program features salient to the stated goal of separating the functions of case management and public guardianship. DHHS has already begun the process of separating the roles of case management as discussed in “State of the System”. The workgroup formulated several steps that should be taken to separate the functions of case management and public guardianship. These are:

- 1) That DHHS develop and implement a transition plan to separate, in rule and practice, the role of public guardianship (of persons served by OACPDS) from that of case management.**
- 2) That DHHS develop and adopt a formal structure for conducting guardianship studies (assessment of functional and practical support needs, identifying potential private guardians, providing technical legal assistance to potential willing parties, etc.) on behalf of all individuals served by OACPDS for whom public guardianship is being sought. This is a critical step in preparation for consideration of moving towards privatization, as this would likely be an ongoing responsibility of DHHS due to potential conflict of interest if performed by a private provider.**
- 3) That DHHS develop a specific Quality Assurance plan for OPG, identifying standards specific to program administration of public guardianship. Currently, public guardians submit annual reports to the court. Probate Courts retain (legal) jurisdiction; issues can be raised w/ letter to the court. Formal QA is critical, especially in systems that are under stress (as they are now due to fiscal challenges and loss of institutional memory due to significant staffing changes). The QA component seems to be a relative weakness in other states’ programs. The OPG should adopt the National Guardianship Association’s (“NGA”) standards (which can be found online at http://guardianship.org/documents/Standards_of_Practice.pdf), as they relate to training, ethics, and program administration as a matter of policy.**

Consideration should be given to having all public guardianship services adhere to the same standards. (The NGA Code of Ethics is also available on-line at http://guardianship.org/documents/Code_of_Ethics.pdf)

A Quality Assurance plan should also include identifying training requirements and competencies for guardians that address the specific needs of persons with developmental disabilities.

- 4) DHHS should submit a report on January 1, 2014 to the HHS Committee evaluating the effectiveness of the implementation of recommendations endorsed by the Committee and to assess the potential for privatization of all Office of Public Guardianship functions. The Work Group recommends that this report be provided in draft to the Maine DD Council, with a request that the Council reconvene LD 1252 stakeholders to review the report and provide input to the HHS Committee from the stakeholder group.

The LD1252 workgroup is willing to continue to meet on an ad hoc basis to work with DHHS to quantify measurable quality indicators, including data such as guardian: ward ratios, training, number and type of contacts, etc. that should be included in subsequent biannual reporting.

VI. Workgroup Recommendations Related to Potential Privatization of Public Guardianship Responsibilities.

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The workgroup identified several activities that would be helpful to prepare for the privatization of public guardianship. Based upon the estimates provided by the DHHS Office of Elder Services and the public guardianship program in New Hampshire, it is not clear that financial savings would result from privatization. The workgroup feels that it is extremely unlikely that any potential savings could be realized in the short term due to transition and start up costs. If this course of action is pursued, the workgroup strongly recommends engaging stakeholders representing all populations served by OPG, as it is further unlikely that savings will be realized via privatization of guardianship only for persons served by OACPDS.

These recommendations are intended to provide DHHS with additional information about required resources and contractor requirements and more importantly, provide for adequate protections for public wards:

- 1) Transition the Office of Public Guardianship to a consolidated function within DHHS with a separate budget line.
- 2) Privatization of public guardianship should clearly and proactively address the need

for adequate and sustainable funding sufficient to assure ongoing availability of service (i.e. no wait list)

- 3) Privatization of public guardianship should include provision for independent oversight.
- 4) Selection of guardianship provider should include specific language regarding avoidance of potential conflict of interest (i.e., providers of (other) Medicaid waiver services would be ineligible to provide guardianship services)
- 5) Contracting with a future guardianship provider should seek to minimize disruption of services to public wards and provide protection against retaliation for the future guardianship providers
- 6) Contracting with a future guardianship provider should be contingent upon adoption of NGA standards and implementation of a Quality Assurance plan to include activities outlined and referenced in this report.

Other Workgroup Recommendations

The workgroup also focused its attention to other program features, including the feasibility of merging the Correspondent program overseen by the Maine Developmental Services Oversight and Advisory Board with public guardianship responsibilities.

When the Community Consent Decree ended over a year ago, there was legislation in place that provided for the continuation of the Volunteer Correspondent Program under the oversight of the Maine Developmental Services Oversight and Advisory Board. While there was a gap last winter after a staff resignation, the program began operating again in June with the help of an Interim Volunteer Coordinator. A new half time Volunteer Coordinator was hired in December. The program matches volunteers with individuals with intellectual disabilities and autism spectrum disorders who do not have unpaid private guardians or family members actively involved in their lives and their planning process, or whose family members are unable to participate in planning with them because of distance or some other reason. Often a friendship develops, but even more important is the advocacy provided by a Correspondent. In addition to having personal contact, Correspondents are expected to participate fully in the planning process. In fact, Maine law requires that the planning process must include the Correspondent when a person has one. Volunteer Correspondents must not be providing a direct service to the people with whom they are matched so that they will be able to advocate independently. They must be at least 18. Currently, there are 325 Volunteer Correspondent matches. However, there are over 140 people throughout Maine who have been identified as needing a Correspondent and the Program is seeking applicants to meet this need.

The workgroup recognizes the important role that individuals Correspondents have served in the lives of persons receiving services from OACPDS and the role the Correspondent program itself has served in shaping Developmental Services. Expanding its responsibilities to include guardianship would substantially alter the nature and scope of the Correspondent program. The program may, with additional resources, be able to develop the capacity to administer a volunteer guardianship program. The workgroup is aware that there is work underway (pursuant to LD 1115) to clarify Developmental Services oversight responsibilities. The workgroup does not recommend expansion of the scope of responsibility of the Correspondent program while this work is pending. The workgroup believes that volunteer guardianship, as an adjunct to a professional guardianship program, has the potential to increase the safety of and contribute to the lives of vulnerable Maine residents. Many persons under public guardianship cannot be adequately served by lay volunteers (i.e. persons with forensic issues, those with complicated medical or financial issues, etc).

The workgroup recommends expansion of innovative options to expand the role of private individuals in protecting the interests of vulnerable persons. For example, the Correspondent (or other) volunteer program could specifically recruit, train, and support a pool of persons who may be interested and willing to take on the responsibility of private guardian. The workgroup suggests that development of a volunteer program address the needs of and involve stakeholders representing all of the populations currently served by OPG. Again, any volunteer guardianship program must recognize the need for ongoing dedicated (paid staff) support to address recruitment, training and legal program needs.

Recommended steps for Transition of Public Guardianship to Office of Public Guardianship (OPG)

Tasks and activities identified in this timeline are described in greater detail in the “Recommendations” section of this report. (The dates included are based on the legislation’s original recommendation for change in administration as of July 1, 2012.)

July 1, 2012 – June 30, 2013 (0-12 months)

- DHHS should prepare and submit a plan for transition of public guardianship from OACPDS case management staff to OPG staff, which should include personnel needs (job requirements, performance standards, etc), technology (due to the uncertainty of the future of state case management). Within 3 months, 50% of public guardianships should be transitioned to OPG; within 12 months 100% of public guardianships will be transitioned to OPG.

- DHHS should develop and adopt a Quality Assurance plan. (LD 1252 workgroup members are prepared to support this effort.)

After July 1, 2013 (>12 months)

- During the next budget cycle DHHS will develop a strategy so that the Office of Public Guardianship is able to become a consolidated function (w/ separate budget line including personnel, technology, etc., in preparation for move to private sector)
- DHHS will report back on the progress towards achieving recommendations. Report to be submitted to the DD Council. The DD Council will be responsible to reconvene LD 1252 stakeholders to review report & will consult with members of future HHS Committee regarding efforts.