North Carolina Department of Health and Human Services

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Sherry Bradsher
Deputy Secretary for Human Services

October 1, 2014

SENT VIA ELECTRONIC MAIL

The Honorable Ralph Hise, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Room 1026, Legislative Building
Raleigh, North Carolina 27601

The Honorable Justin Burr, Co-Chair
Joint Legislative Oversight Committee
Health and Human Services
Room 307A, Legislative Office Building
Raleigh, NC 27603

The Honorable Mark Hollo, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Room 639, Legislative Office Building
Raleigh, North Carolina 27603

Dear Senator Hise and Representatives Hollo and Burr:

Pursuant to Section 12D.3 of Session Law 2014-100, the Department of Health and Human Services (DHHS) was directed to conduct an examination of ways to improve the public guardianship system and submit a final report of its findings and recommendations by October 1, 2014.

Specifically, in Section 12D.3.(a) the Division of Aging and Adult Services (DAAS) was directed to develop a plan to evaluate complaints pertaining to wards under the care of publicly funded guardians. DAAS has collaborated with the Administrative Office of the Courts on the development of the plan. In addition to the current DAAS procedures for evaluating complaints which are documented in the plan, observation and/or a face-to-face interview with the ward is now incorporated into the procedures. The plan also describes the knowledge and experience DAAS staff has in understanding the unique needs and abilities of wards as complaint evaluations are conducted. This plan is contained in Section I of the final report.

In addition, Section 12D.3.(b) directed DAAS to develop a model plan for transitioning wards to alternative guardianship arrangements when individual guardians of the person become unable or unwilling to serve. DAAS has collaborated with the clerks of superior court, local management entities that have been approved as managed care organizations, the North Carolina Bar Association Section on Elder and Special Needs Law, and a number of additional stakeholders that you will see identified in the plan. The model plan focuses on ways to prevent the appointment of a public guardian. This plan is contained in Section II of the final report.

Section 12D.3.(c) directed DHHS to continue to study whether utilization of care coordination services would provide needed oversight to safeguard against conflicts of interest when guardians serve as paid providers. The Department, through its Division of Medical Assistance and the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, is soliciting input from a variety of stakeholders on the important issue of Guardian as provider. We anticipate having our recommendations by January 2015. The status of this study is addressed in Section III of the final report.

If you have questions or need additional information about Sections I, II, or III in the final report, please contact Suzanne Merrill, Acting Director of DAAS at Suzanne.Merrill@dhhs.nc.gov or 919.855.3460.

Sincerely,

Sherry Bradsher

Sherry Bradsher
Deputy Secretary for Human Services

cc:
Pam Kilpatrick
Rod Davis
Matt McKillip
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Robin Cummings, MD
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October 1, 2014

SENT VIA ELECTRONIC MAIL

Mr. Mark Trogdon, Director
Fiscal Research Division
North Carolina General Assembly
Room 619, Legislative Office Building
Raleigh, NC 27603-5925

Dear Mr. Trogdon:

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FINAL REPORT ON THE EXAMINATION OF WAYS TO IMPROVE THE PUBLIC GUARDIANSHIP SYSTEM

PURSUANT TO SESSION LAW 2014-100 SECT. 12D.3

STATE OF NORTH CAROLINA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OCTOBER 1, 2014

Introduction

Session Law 2014-100, Section 12D.3 requires the Department of Health and Human Services, Division of Aging and Adult Services (DAAS) to examine ways to improve the public guardianship system and submit a report of its findings and recommendations for each of the areas examined. The two plans contained in the report incorporate stakeholder participation and recommendations for improving the public guardianship system.

Specifically, Section 12D.3.(a) requires DAAS to collaborate with the Administrative Office of the Courts to develop a plan to evaluate complaints pertaining to wards under the care of publicly funded guardians. Section 12D.3.(b) requires DAAS to collaborate with stakeholders to develop a model plan for transitioning wards to alternative guardianship arrangements when an individual guardian of the person becomes unable or unwilling to serve. Section 12D.3.(c) directs DHHS to continue to study whether utilization of care coordination services would provide needed oversight to safeguard against conflicts of interest when guardians serve as paid providers.

This final report is divided into three sections. Section I is the *Plan for Evaluating Complaints Regarding the Performance of Guardianship Duties by Publicly Funded Guardians*. This plan describes the procedures DAAS currently follows to evaluate complaints and now includes the new requirement to conduct an observation and/or face-to-face interview with the ward.

Section II is the *Model Plan for Transitioning Wards to Alternative Guardianship Arrangements*. This plan describes the components of the model plan, including strategies for implementation and possible legislative changes.

Section III is the *Study of Oversight for Guardians as Paid Providers*. This Section lays out how the Department is continuing to examine whether utilization of care coordination services would provide needed oversight to safeguard against conflicts of interest when guardians serve as paid providers. The Department, through its Division of Medical Assistance and Division of Mental Health, Developmental Disabilities and Substance Abuse Services, is soliciting input from a variety of stakeholders on the important issue of Guardian as provider. We anticipate having our recommendations by January 2015.

Section I
Plan for Evaluating Complaints Regarding the Performance of Guardianship Duties by Publicly Funded Guardians

Legislative Mandate

Session Law 2014-100, Section 12D.3.(a) requires the Department of Health and Human Services (Department), Division of Aging and Adult Services (DAAS) to collaborate with the Administrative Office of the Courts to develop a plan regarding the Department's evaluation of complaints pertaining to wards under the care of publicly funded guardians in order to ensure that, in addition to current requirements, the complaint process incorporates a face-to-face observation of the ward, an interview with the ward, or both. The plan is to include a requirement that an individual with experience in understanding the unique needs and abilities of the ward be assigned to conduct the observation or interview.

Publicly funded guardians are county departments of social services appointed as disinterested public agent guardians (DPAG) and corporations with which DAAS has entered into a contract to provide guardianship services. The DAAS has responsibility for oversight of NC's publicly funded guardianship program. Included in that oversight responsibility are receipt, evaluation, and resolution of complaints concerning the performance of a public guardian's duties.

Currently Established DAAS Procedures for Complaint Evaluations

All complaints follow the same basic process – the complaint is logged in and assigned; time frames are established for evaluating the complaint; information is gathered from the individual initiating the complaint, the guardian and/or the guardian's designated representative, family members and others involved in the ward's care; and a written summary is completed based on the findings of the evaluation. The complaint evaluation process has not routinely included observation and face-to-face contact with the ward, but this is being added to the current procedures as required by Session Law 2014-100.

- **Receipt of Complaint**

  Complaints concerning the performance of guardianship duties by either a county department of social services (DSS) serving as a DPAG or a corporation under contract with DAAS are received from a variety of sources. Complaints are typically citizen-initiated and are most often referred from the Governor's Office; members of the NC General Assembly hearing from their constituents; and NC's Congressional delegation hearing from their constituents.

  Referrals from these entities are sent to the Department's Office of Government Affairs and then referred to DAAS to conduct the evaluation.

In addition to the above sources of complaints, written correspondence may come directly to the Department or DAAS from a family member or concerned citizen.

Initially upon receipt of the complaint by DAAS, a determination is made as to whether the complaint contains allegations of abuse, neglect and exploitation of a disabled adult in need of protective services. If the complaint meets the screening criteria for an Adult Protective Services report (APS), DAAS staff makes an APS report to the DSS where the ward is living or is present. The APS report is made in conjunction with initiating a DAAS evaluation regarding the concerns about the ward's care. DAAS staff follows up with the DSS to assure that time frames are being followed for initiating an APS evaluation and where appropriate the provision of protective services for the disabled adult.

- **Assignment of Complaints and Information Gathering**

Complaints are assigned to DAAS staff on a rotating basis in most instances on the day they are received from the Department or received directly at DAAS. If not assigned on the same day, they are assigned the next business day. Once the complaint is assigned, staff begins the evaluation by contacting the person making the complaint to gain a better understanding of the concerns outlined in the complaint. After that information is obtained, DAAS staff notifies the guardian that a complaint has been received and discusses the complainant's concerns with the guardian and/or the guardian's representatives. Collateral contacts with others knowledgeable about the situation are also made. All available information is gathered by DAAS staff in order to gain as complete a picture as possible regarding the concerns.

- **Timeframes for Completing Complaint Evaluations**

Complaints received by DAAS from the Department are required to be responded to within three business days and typically this time frame is met. Sometimes circumstances make it necessary to extend the deadline beyond the three business days. Additional time may be needed just to receive a follow up telephone call from the person making the complaint after the initial contact from DAAS staff; or to more fully explore the situation with the ward's family members and other collateral contacts in a timely manner; or to conduct the on-site record review. In these situations, an interim written response is provided to the referral source regarding the progress toward resolving the complaint. The interim response provides any recommendations for immediate action to help resolve the complaint.

Effective October 1, 2014, an interim response is now provided within the three business day time frame described above. The new requirement in

Session Law 2014-100 to observe the ward and/or conduct a face-to-face interview with the ward is completed within seven business days. At the conclusion of the observation and/or face-to-face interview, a final written response is prepared indicating any additional findings or recommended action.

- **Resolution of the Complaint**

Depending on the nature of the complaint, it may be completely resolved via telephone and electronic communication between the person making the complaint, the guardian and DAAS staff. Consultation and technical assistance with the guardian and/or the guardian's representatives regarding the performance of the guardian's duties is provided by DAAS staff as needed and appropriate to assure compliance with applicable state laws and policies for guardians.

In some situations DAAS staff conducts an on-site review of the ward's record maintained by the DSS serving as a DPAG or the guardianship corporation. Examining all of the documentation in the ward's record helps DAAS staff obtain a more complete understanding of the guardian's involvement with the ward. Having the benefit of this history can be useful in bringing resolution to the complaint.

Effective October 1, 2014, an on-site review of the ward's record maintained by the DSS serving as a DPAG or the guardianship corporation is conducted in all instances in conjunction with the implementation of the observation and/or face-to-face interview with the ward.

Resolution of a complaint may involve a face-to-face meeting with the person making the complaint, the ward's family, and the guardian and/or the guardian's representatives. DAAS staff participates in these meetings as needed and appropriate to help resolve the complaint.

In some situations, the guardian may need to take corrective action to resolve a complaint. When this occurs, DAAS staff enters into a written program improvement plan with the guardian. DAAS staff follows up with the guardian at regularly scheduled intervals to assure that the corrective action has been implemented.

A written summary response is always provided by DAAS staff upon completion of the complaint evaluation. The summary includes the findings from the evaluation; the efforts to achieve resolution to the complaint; and recommendations for action. The summary is submitted to the original source from which the complaint is received.

Effective October 1, 2014, the written summary is also sent to the guardian and the Clerk of Superior Court with jurisdiction in matters pertaining to the ward.

- **DAAS Staff Qualifications for Evaluating Complaints**

  DAAS staff is currently assigned to conduct complaint evaluations. Training, education, and experience qualify DAAS staff to receive, evaluate, and resolve these complaints. DAAS staff has expertise in NC's publicly funded guardianship program and experience in understanding the unique needs and abilities of wards. They are well positioned to conduct the observation of the ward and/or face-to-face interview these individuals.

- **New Component Required by Session Law 2014-100 - Observation and/or Face-to Face Interview with the Ward**

  In addition to the current complaint procedures described above, DAAS staff observes the ward and/or conducts a face-to-face interview with the individual as part of the complaint evaluation. Wards may live in community based settings or residential settings such as adult and family care homes, group homes, intermediate care facilities, and nursing facilities. The observation and/or face-to face interview takes place where the ward resides.

  The type of setting where the ward resides provides opportunities to gather additional information that may be useful to the resolution of the complaint. DAAS staff communicates with facility staff and reviews facility records when the ward is in a residential setting. In community based settings, DAAS staff communicates with individuals living with the ward or others who are familiar with the ward (as available) to obtain information.

  The findings from the observation and/or face-to-face interview are included in the written summary of the overall complaint evaluation.

Section II
Model Plan for Transitioning Wards to Alternative Guardianship Arrangements

LEGISLATIVE MANDATE

Recent reports, including the *2013 NC Department of Health and Human Services Public Guardianship Ad-Hoc Workgroup Report* and the *March 2014 Joint Legislative Oversight Committee on Health and Human Services Subcommittee on Public Guardianship Final Report*, have reached findings and made recommendations regarding public guardianship in NC. The findings of these reports were quite consistent. One finding in particular, that the number of guardianships is increasing and that when there are no individuals able to serve, increased burdens are placed on public guardians, is included in both reports.

Session Law 2014-100, Section 12D.3.(b) advances the findings in the above reports by requiring the Department of Health and Human Services (DHHS), Division of Aging and Adult Services (DAAS) to develop a Model Plan for transitioning wards to alternative guardianship arrangements. The Model Plan is to describe ways to transition a ward to an alternative guardianship (of the person) arrangement when an individual guardian of the person becomes unable or unwilling to serve, and is to focus on ways to prevent the appointment of a public guardian.

DAAS developed the Model Plan in a work group partnership with a local management entity that has been approved as a managed care organization (LME/MCO); the NC Division of Mental Health, Developmental Disabilities, and Substance Abuse Services; the NC Bar Association Section on Elder and Special Needs Law; the NC Association of County Directors of Social Services; the NC Guardianship Association; the NC Conference of Clerks of Superior Court; representatives from the NC Attorney General's Office, and guardianship corporations. The UNC School of Government and NC Administrative Office of the Courts assisted with research and technical support. Many of these stakeholders participated on the DHHS work group to develop the *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report.*

An agreed upon definition of a public guardian, included in the *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* is "*the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of appropriate, willing, and responsible family members or friends to serve as, or in the absence of resources to employ a private guardian.*" This same definition was used by the work group to develop the Model Plan.

As stipulated in Session Law 2014-100, this Model Plan addresses situations related to Guardian of the Person (GOP) only. The Model Plan provides a framework and strategies for alternative guardianship arrangements and recommendations for further

study. It also identifies statutory changes that may be needed to support alternative guardianship arrangements.

BACKGROUND

There are a variety of circumstances that may lead to a motion before the Clerk of Superior Court (Clerk) for the individual serving as GOP to be removed and a successor GOP appointed. Circumstances include, but are not limited to, the GOP's incapacity or death; inability of the GOP to act on the ward's behalf or in the ward's best interest; the ward's own motion to have a GOP removed and a successor guardian appointed; facilities such as an acute care hospital requesting removal of a GOP; Adult Protective Services intervention due to abuse, neglect or financial exploitation of the ward; or the Clerk's own motion.

Adult individuals (usually family and friends of the ward) are the first priority of appointment as GOP for a person found to be in need of a guardian (NC G.S. 35A-1214). In most instances these individuals have long standing relationships with the person under guardianship, know the person well and the Clerk can determine that the individual is appropriate, willing, and responsible to serve as GOP. Many of these appointments will be in effect for decades and the GOP's circumstances will change throughout the appointment. Parents appointed as GOP for adult children will age or die; siblings or other family members or individuals appointed as GOP may move away or marry and have families of their own making it difficult to continue serving as GOP. Any individual serving as GOP may become incapable, unable, or unwilling to continue to serve. Many of the adults coming before the Clerk needing a guardian of the person are younger people with diagnoses of mental illness, intellectual and developmental disabilities and substance use disorders. The *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* documents these trends. The Report can be found at this link http://www.ncdhhs.gov/aging/pub/guardadhocworkgroup.pdf).

Knowing that these life changing events will occur with regularity, the member of the workgroup partnering with DAAS developed the Model Plan to promote guardianship alternatives, education for individuals newly appointed as a GOP, support for the GOP and those seeking to be appointed GOP, and an improved response for crisis situations when a successor GOP must be appointed.

Previous Findings and Recommendations Related to the Model Plan

Findings and Recommendations from the *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* that relate directly to the development of this Model Plan are cited below and include:

Finding: *The number of people needing a public guardian will continue to increase.*
Recommendation: *Implement statewide, standardized procedures to ensure that a public guardian is appointed only when no other appropriate individual is available and able to serve, including requiring that an assessment be completed prior to an*

appointment hearing before the clerk of court on the adjudication of incompetency and appointment of a guardian when there is likelihood that a publicly funded guardian will be appointed.

Finding: *The vast majority of NC's public guardianship service is supported by federal and county funds (96%); the state contributes only 4%; and current and future demands for a public guardian cannot be met without additional resources, primarily in the form of additional funding.*
Recommendation: *Provide adequate resources for the current and future needs of NC's public guardianship service, including:*

- *Adequate state funding of $2.5 million to add 33 FTEs statewide (33 Social Work III positions @ $75,000) in order to meet the recommended 1FTE:22 wards caseload standard (see appendix 10 for FTE methodology and appendix 9 for caseload standard methodology)*

  Note: As of the date of the Model Plan, the updated numbers to provide adequate resources indicate that 36 Social Work III positions are needed at a cost of $2.7 million.

- *Restore funding so corporations that receive public funds to serve as guardian can be reimbursed at original funding levels of $213.17/ward/month*
- *Provide funding to expand the capacity for existing corporations and increase the overall number of corporations available to serve as public guardian.*

Finding: *Guardians generally, and public guardians specifically, experience difficulty accessing the array of mental health services provided by LME/MCOs on behalf of the people they serve.*
Recommendation: *Improve access to the array of services provided by LME/MCOs to meet the needs of adults with severe and persistent mental illness, intellectual and developmental disabilities and substance use disorders. Examine barriers to services and make recommendations to address them for the adults under guardianship and their families.*

Finding: *Pursuant to NC GS 35A, a guardian of the person is not entitled to receive a fee for their services and time spent carrying out their duties. They are only entitled to receive reimbursement of reasonable expenses incurred.*
Recommendation: *Study and make recommendations for improvements to strengthen NC's public guardianship system including study the potential imposition of a fee for guardianship services of the person in addition to currently allowable reimbursement for expenses.*

MODEL PLAN COMPONENTS

Promote Guardianship Alternatives

Utilizing guardianship alternatives may make it unnecessary to petition the court for adjudication of incompetence and appointment of a GOP. Guardianship alternatives

include early long term planning, use of advance directives, and implementation of resources to support individuals with disabilities such as the use of Supported Decision Making and the Guardianship Capacity Questionnaire (see additional references to these documents on page 5). Undertaking a review of NC GS 90-21.13 in collaboration with the NC Bar Association Section on Elder and Special Needs Law and other stakeholders in order to clarify the role of surrogate decision makers in health care settings, may help to assure that guardianship proceedings are not undertaken unnecessarily when health care advance directives are in place.

Use of a Durable Power of Attorney when an individual has the capacity and there is a trusted person who will act responsibly and in the best interest of the individual can be an effective guardianship alternative. Also, advance directives such as a Health Care Power of Attorney, Declaration of Natural Death (living will) and Advance Instruction for Mental Health Treatment can be effectively utilized as alternatives. Advance directives can be put into place by any adult who has the mental capacity to understand the importance of these documents and the possible consequences of granting this authority to someone else.

Written information such as pamphlets and brochures about advance directives already available through a variety of resources can be made more widely available in places such as public libraries, health and behavioral health care provider offices, social services agencies, senior centers, and a variety of other locations. Information available through websites such as http://4allnc.ncbar.org/ http://www.disabilityrightsnc.org/sites/default/files/Alternatives%20To%20Guardianship.pdf http://www.legalaidnc.org/Public/Learn/projects/SLP/ http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=15&language=2 http://elder-clinic.law.wfu.edu/resources/basic-n-c-information/ can be more widely publicized. Organizations such as the NC Bar Association (Elder and Special Needs Law Section and the Estate Planning and Fiduciary Section), Disability Rights NC, Legal Aid of North Carolina, the ARC of NC, the NC Guardianship Association and elder law clinics associated with North Carolina law schools, in collaboration with NC's LME/MCOs and social services agencies, can continue to make pursuit of guardianship alternatives a priority.

Other efforts, such as the use of Supported Decision Making (SDM), can be utilized as an alternative to guardianship. SDM is a process in which adults who need assistance with decision-making, e.g. some people with intellectual or developmental disabilities, receive the help they need to understand the situations and choices they face. This allows them to make life decisions for themselves, without the need for undue or overbroad guardianship. Quality Trust for Individuals with Disabilities, the Council on Quality and Leadership and the Burton Blatt Institute sponsored a symposium on Best Practices in Supported Decision-Making in October 2013 and issued a report entitled *"Supported Decision-Making: An Agenda for Action, February 2014."*

Expanded and systematic use of the Guardianship Capacity Questionnaire, provided by the NC Administrative Office of the Courts, AOC-SP-208, will help to identify people

who retain the capacity to utilize advance directives and avoid guardianship proceedings http://www.nccourts.org/forms/Documents/846.pdf.

Resources will be needed to provide leadership for a statewide initiative utilizing already available printed materials.

Education for Individuals Newly Appointed as GOP

Whenever an individual completes an Application for Appointment as Guardian (AOC-E-208), the individual signs an acknowledgement that he/she has either received a copy of a pamphlet entitled *Responsibilities of Guardians in North Carolina* http://www.nccourts.org/forms/documents/1184.pdf or that the individual knows where to obtain the document online. Clerks may show or make available a video to individuals seeking to be appointed as GOP regarding roles and responsibilities of guardians.

While these efforts can be helpful in individual Clerk's offices, the effect of a more systematic, statewide plan for educating individuals newly appointed as GOP, or even those seeking to be appointed, may help promote proper petitioning and prevent individuals from resigning in the future and therefore prevent the need for appointment of a public guardian as a successor guardian.

Locally adaptable educational resources for use by the Clerk's office with individuals seeking appointment and those newly appointed as GOP will need to be developed, disseminated, and implemented statewide.

Ongoing Support for Individuals Serving (or seeking to serve) as GOP

Support of individuals serving as GOP is essential to long term viability in that role; especially in light of the fact that many people under guardianship have illnesses and conditions that will most likely impair them for the remainder of their lives necessitating a legal surrogate decision maker in order to exercise their rights. The Model Plan proposes several ways in which a GOP can receive support.

A local guardianship support group providing information about resources and services and occasional respite is one way to provide support to individuals and is thought to be a cost effective tool to prevent an individual from "burning out" in the role as GOP.

A local guardianship support group, perhaps modeled after the NAMI family to family support system, http://www.nami.org/Template.cfm?Section=Family-to-Family&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=4&ContentID=32973 or the Family Caregiver Support system provided by Area Agencies on Aging http://www.ncdhhs.gov/aging/fchome.htm can be established.

Treatment (person centered) plans developed between providers of mental health, intellectual and developmental disabilities, and substance use disorder services and the individual under guardianship should identify support of the GOP as a goal.

A GOP can be further supported by the use of self-help workshops. Current stakeholders, listed below, should work together to develop workshops to assist current and potential GOPs. The goals of the workshops would be to support potential and current GOPs by offering general information about alternatives to guardianship, the legal process and the availability of community resources. These workshops could be presented by community volunteers, including but not limited to local attorneys, social workers, and professionals in the fields of aging and disabilities. The assistance provided by the self-help workshop would be neutral and presenters would not give legal advice. Current stakeholders include county departments of social services, clerks of court, local councils on aging, county departments on aging, law schools, the NC Guardianship Association, representatives from divisions within DHHS, the NC Administrative Office of the Courts, and the NC Bar Association (Elder and Special Needs Law, the Estate Planning and Fiduciary Law, and Health Law Sections).

Support groups targeted to the needs of guardians do not currently exit. A means of establishing an effective model for a support group that could be replicated statewide is through the use of "seed money" for grants to develop and implement local guardianship support groups. Engaging local stakeholders such as social services agencies, LME/MCOs, guardianship corporations, Area Agencies on Aging along with the Clerk will be important to the implementation of this type of support for guardians.

Response to Resignation of GOP and Continued Need for Successor GOP

Even with appropriate support services in place for a GOP, there will be circumstances when a successor guardian must be appointed quickly without much time or advance notice to make arrangements for another guardian. These circumstances include when the GOP dies, becomes incapacitated, is adjudicated incompetent himself/herself, or is removed as guardian. NC GS 35A is not well situated to quickly respond to emergencies when there is a need for a successor GOP. While there are emergency provisions for removal of a guardian (Clerk can enter an ex parte order removing a guardian in the case of an emergency under NC GS 35A-1291), the Clerk's alternatives for appointment of a successor guardian are limited, and he/she would most likely appoint a county department of social services (DSS) to avoid a situation where the ward is without a guardian. It would be difficult for a Clerk to ensure that an individual is appropriate as successor guardian without a hearing. More generally under the removal statute, there is not a process specifically outlined for expediting the appointment of a successor guardian. It simply states that the Clerk should follow the same criteria as the original appointment, which would require notice and a hearing regarding who would be able to serve in the best interest of the ward. Provisions for a "standby guardian" in NC GS 35A-1370(11) and NC GS 35A 1373, apply only to minors.

Pursuant to NC GS 35A-1212.1 (Recommendation of appointment of guardian by will or other writing) a parent may, by will, recommend who should serve as a guardian for their unmarried child who has been adjudicated incompetent. While the Clerk retains ultimate authority as to who will be appointed to serve as GOP, the wishes of a parent are a "strong guide" for the Clerk. Advance planning, including the naming of a successor

guardian in a parent's will, may allow for a more efficient transition for the ward to a new, non-public agent guardian, in the event that a successor guardian is needed.

If it appears to the Clerk or Guardian ad Litem (GAL) that there is not an individual appropriate, willing and responsible to serve as GOP, the Clerk or GAL may submit a referral to the DSS for assessment and identification of individuals who may be willing to serve as GOP in the event the respondent is adjudicated incompetent. This referral process is included in the *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* as a recommendation to "implement a statewide, standardized procedure to ensure that a public guardian is appointed only when no other appropriate individual is available and able to serve." The *Report* further recommends to "statutorily require that a guardianship assessment be completed prior to an appointment hearing before the Clerk of Court on the appointment of a guardian when there is likelihood that a publicly funded guardian will be appointed."

The *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* recommended a twelve month pilot of a successful process currently being used by the Forsyth County DSS and the Clerk's Office. In Forsyth County an assessment is conducted by Forsyth DSS at the request of the Clerk when the Clerk determines it is likely that he will need to appoint the DSS as a public agent guardian. The assessment provides an opportunity for the DSS to determine if there are other suitable individuals to serve as guardian in lieu of the DSS being appointed. This information is then reported back to the Clerk for his consideration in the guardianship proceedings. It will be important to pursue this previous recommendation as part of the Model Plan in order to educate other DSSs and Clerks about the referral process used in Forsyth County in an effort to expand it statewide.

LEGISLATIVE CHANGES

The final recommendation (item 6) in the *2013 DHHS Public Guardianship Ad Hoc Workgroup Report* includes several studies that are relevant to the development of the Model Plan to support alternative arrangements to guardianship. These studies should be pursued.

The recommendations for studies include the following:

- *Study the potential imposition of a fee for guardianship services of the person in addition to currently allowable reimbursement for expenses.*
    - *Consider revisions to NC GS 35A to require the ward's resources be used to pay a fee for guardianship services whenever possible.*
    - *Consider whether public guardians could charge a fee for services in the event a private guardian is unavailable or too expensive given the ward's resources.*
    - *Develop a network of adult individuals and private corporations who could be paid a standard fee for service as guardian of the person.*

- *Develop a standardized fee structure to be imposed by guardians of the person in carrying out their duties.*
    - *Reference Illinois Statute 755 ILCS 5/Sec. 27-1. Fees of representative as an example of allowable fees and schedule.*

- *Review and improve State laws governing medical decision making to ensure that guardians are only appointed when necessary*
    - *Collaborate with the NC Bar Association, Elder Law and Special Needs Section, and other stakeholders to consider revisions to NC GS 90-21.13 to clarify the role of surrogate decision makers in health care settings.*

In addition to the above studies, a review of NC's general statutes related to successor guardianship should be undertaken and include recommendations for statutory changes. One such change that may be helpful is the ability to designate a "standby guardian" for an adult, which could prevent the need for appointment of a public guardian as a successor GOP. Improvements to identification of successor guardians in G.S. 35A (1292, 1293, 1370, 1374) should be considered as part of this review as well.

OTHER INITIATIVE

In addition to the studies described above, DAAS together with the work group partnership should review, make recommendations and submit a proposal to the NC Administrative Office of the Courts (AOC), pursuant to policies established by AOC, requesting any modifications to the Civil Case Processing System (VCAP) to enable additional methods of tracking guardianship matters.

Section III
Study of Oversight for Guardians as Paid Providers

Legislative Mandate

Session Law 2014-100, Section 12D.3.(c) requires the Department to continue to study whether utilization of care coordination services would provide needed oversight to safeguard against conflicts of interest when guardians serve as paid providers.

Evaluation of NC Innovations Waiver

The Department, through its Division of Medical Assistance and Division of Mental Health, Developmental Disabilities and Substance Abuse Services, is currently holding 13 listening sessions across North Carolina around the intellectual and developmental disabilities (IDD) system. These listening sessions are designed to engage all stakeholders in solution-focused dialogue regarding system issues but are specifically tailored to solicit input regarding the 1915(c) Innovations Waiver.

Each of the sessions has had a significant portion devoted to the guardian as provider issue and the role of care coordination. Additionally, the Department has put together a formal stakeholder committee to process information from these listening sessions and to make recommendations to the Department on changes to the Innovations waiver.

The listening sessions will be completed by November 1, 2014. The Department's goal is to have a series of recommended changes for this waiver and any legislative or regulatory changes that relate to the IDD service delivery system prepared by January 31, 2015. At that time we will have a finalized recommendation on the role of care coordination related to guardians who are also paid providers.

CONCLUSION

The Model Plan provides a framework and strategies for the development of alternative guardianship arrangements. More discussion, collaboration, and study are needed. The Joint Legislative Oversight Committee on Health and Human Services Subcommittee on Public Guardianship acknowledged this need in Finding 1 of its March 2014 Report which states in part "Where there are no individuals able to serve, increased burdens are placed on public guardians, and study should be made with regard to developing a more robust system of disinterested public guardians, as well as making transition plans for wards whose family members or other individual guardians may become unable to continue providing guardianship services."

Good strides have been made regarding publicly funded guardianship and guardianship alternatives as evidenced by the *2013 DHHS Public Guardianship Ad-Hoc Workgroup Report* and the *March 2014 Joint Legislative Oversight Committee on Health and Human Services Subcommittee on Public Guardianship Final Report*. It will be important to

continue this important work by engaging stakeholders, DHHS, and the NC General Assembly to move these recommendations forward and bring them to fruition.