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**A REPORT TO THE GOVERNOR AND THE
77TH LEGISLATURE
ON GUARDIANSHIP ISSUES**

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**REPORT OF GUARDIANSHIP ADVISORY BOARD
TO HHSC ON GUARDIANSHIP ISSUES**

H350.8 R299GU 2000

Texas Health and Human
Services Commission.

On this, the 1st day of December, 2000, we, the Guardianship Advisory Board, having been appointed by the Probate Court Judges of Texas, by the Commissioner of the Texas Health and Human Services Commission, and by the Texas Board of Protective and Regulatory Services, hereby submit the following report to Commissioner Don Gilbert of the Texas Health and Human Services Commission, to the Department of Protective and Regulatory Services, to the Governor, to the Lieutenant Governor, and to the Speaker of the Texas House of Representatives as required by Section 531.1235, Subchapter D, of the Texas Government Code.

Pat Ferchill

Honorable Pat Ferchill, Attorney, Judge of Probate Court No. Two, Tarrant County, Presiding Officer and Co-Chair

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Michael D. Brown

Honorable Michael D. Brown, Judge of Tom Green County

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Raymond Costello, Ph.D., Public Representative

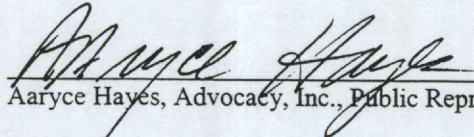
Terry W. Hammond

Terry W. Hammond, Attorney, El Paso County

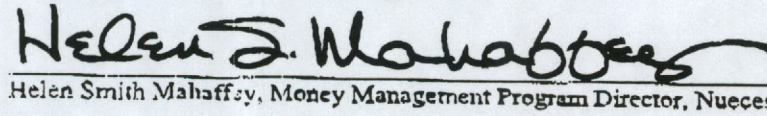
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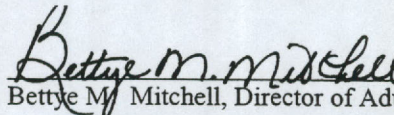
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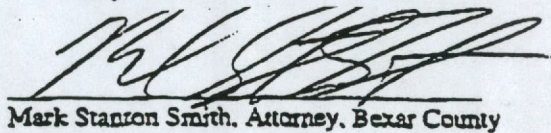
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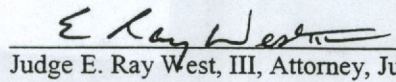

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**2000 ANNUAL REPORT OF THE
GUARDIANSHIP ADVISORY BOARD
ON THE DEVELOPMENT OF A
STATEWIDE GUARDIANSHIP SYSTEM
FOR TEXAS**

LETTER OF TRANSMITTAL

This report is submitted to the 77th Legislature as requested by the 76th Legislature by the Texas Guardianship Advisory Board (the "Board"), which was created under the authority of Chapter 531, Subchapter D of the Texas Government Code, which became effective September 1, 1997, as amended by HB 2641 (76th Leg.) effective September 1, 1999.

Pursuant to Chapter 531 the Board shall prepare an annual report with respect to the recommendations of the advisory board. The Board shall file the report with the Texas Health and Human Services Commission (HHSC), the Texas Department of Protective and Regulatory Services (TDPRS), the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives not later than December 15th of each year. This is the third report of the Board

Based on the work of this Board in FY 1998-2000, it is the Guardianship Advisory Board's continuing position, as first stated in the 1998 Report, that a large number of incapacitated individuals (46,000 +) in Texas for whom guardianship or less restrictive services are appropriate and necessary are not currently receiving these services. In order to remedy this situation and to meet the needs of incapacitated individuals, it is critical that the State of Texas increase the amount of funding it provides for guardianship services at this time.

Several key factors discussed in the 1999 Report demonstrated the critical need for increased funding for statewide guardianship services as essential to the further development of an effective and efficient statewide guardianship system in Texas. In order to meet the ever increasing guardianship service needs of incapacitated citizens of this state, in 2000 key factors have assumed more immediate and critical importance and heightened the need for immediate action to significantly increase funding for guardianship services at this time.

Key factors at this time include the following:

- The effect of the U. S. Supreme court decision in *Olmstead v. LC* and the impact of a statewide assessment of all institutional settings (including residents of all nursing homes in the state) to determine the possible community placement of these residents;

- **The number of incapacitated individuals without family, friends, or funds who lack access to guardianship services and less restrictive alternatives;**
- **The number of incapacitated individuals with family or friends who are able and willing to serve as guardian for the incapacitated individual but who lack the necessary resources to secure legal representation in a guardianship proceeding;**
- **Continued population growth and increase in ageing (65+) segment of the general population;**
- **Lack of uniform statewide application of incapacity assessment tools in guardianship matters in guardianship courts;**
- **Inadequate continuing education of parties involved in the guardianship process, including judges, probate clerks, attorneys, and guardians; and,**
- **Inconsistent enforcement and oversight of guardians' accountability by Courts.**

Increased funding by the Legislature for guardianship and less restrictive services is vital in the collaborative process of addressing these issues involved in the protection of incapacitated individuals within Texas.

EXECUTIVE SUMMARY

The Guardianship Advisory Board at the Texas Health and Human Services Commission (HHSC) was established by the 75th Legislature in 1997. One of the Board's statutory missions is to develop a plan to facilitate the establishment of "a statewide guardianship program". The members of the Guardianship Advisory Board have determined that the term "statewide guardianship system" is the best term to describe the guardianship needs that presently exist in Texas. The Board has submitted two Reports, 1998-1999, which detail the Board's progress in the establishment of a statewide guardianship system.

The overall effect of grant awards to guardianship programs from 1998-2000 has been quite significant in the development of the statewide system. The distribution of \$242,000 of grant funds by the Alliance has generated proposals from 24 programs to assist individuals with guardianship and money management services. Nine new local guardianship programs have been started in the last 2 and 1/2 years. Seven programs have expanded their services to nearby counties or to additional populations. Recall that in 1998, only 12 guardianship programs existed in the State. Twenty-one guardianship and money management programs exist at this time. **Therefore, because of this small amount of grant funds, the number of guardianship programs in Texas has increased by 60%.**

While these grant proposals only commit to the provision of guardianship or money management services for one year, the Board has found that these grants act as "seed money." Once the seeds for these guardianship programs are planted, local communities begin to supply the necessary resources to sustain these programs because they fill an urgent need in these communities.

While these numbers are impressive, the availability of grant funds from the Alliance has had a far greater impact than this. Agencies such as local Arc chapters and Area Agencies on Aging are starting to pay attention to the guardianship and money management needs of individuals in their service areas. Courts are becoming proactive and are beginning to initiate guardianship investigations and to encourage the development of local guardianship programs to protect the incapacitated citizens of their counties. The Texas Guardianship Association has added new members, and more staff of local guardianship programs are becoming registered guardians by taking an exam offered by the National Guardianship Foundation. Directors and staff of local guardianship programs are becoming members of the National Guardianship Association and attending their conferences. This small amount of grant funds has renewed local interest in the protection of incapacitated individuals who lack family support.

However, there is a long way to go in order to reach the goal of providing appropriate and necessary guardianship and less restrictive services for all incapacitated individuals residing within the state of Texas.

In summary, the 2000 Report will present the following:

- **Background Information**
- **A description of the Texas guardianship system in 1998-2000**
- **A description of the methods prescribed by the guardianship Advisory Board to develop a Statewide Guardianship System and the progress made thus far in this effort;**
- **Update as to status of Guardianship Transition Plan;**
- **An overview of Board's recommendation as to the adoption of minimum standards for guardianship program, persons involved in guardianship programs and private professional guardians in Texas as to be adopted by rule as mandated by the 76th Legislative session;**
- **An update of the process of the Board's ongoing review of the guardianship policies of all health and human services agencies;**
- **The Board's legislative recommendations; and,**
- **A summary of the next steps involved in the development of the Statewide Guardianship System.**

Part A. Overview of Current Guardianship "System"

Texas is in the process of developing a statewide guardianship system to provide each and every county with the ability to provide appropriate guardianship services and less restrictive alternatives to all incapacitated individuals who require these services in the state. A brief description of the Courts and Guardianship Programs in the current "system" is given below.

1. Guardianship Courts

Multiple types of courts in Texas have guardianship jurisdiction. These courts possess differing procedures in guardianship matters, and these differences can make access complex and challenging for incapacitated individuals and their family and friends. Courts with guardianship jurisdiction include statutory probate courts, constitutional county courts, county courts at law, or district courts.

Most of the guardians appointed by Courts in Texas for incapacitated individuals are either members of the ward's, "the incapacitated person", family, or friends of ward who qualify as guardian and are willing to serve as such. Other persons serving as guardians include attorneys, local guardianship

programs if available, in-house county guardianship programs (located in two counties only), APS-TDPRS, ministers, accountants, banks, or private professional guardians.

- **Lack of Individuals to be Appointed Guardian by the Courts**
However, situations are increasingly occurring throughout the state wherein an incapacitated individual either (1) has no family members or friends who are willing to serve as guardian or who are able to qualify as a guardian; or (2) the incapacitated person is indigent, and the county is then responsible for the cost of guardianship proceedings on behalf of this individual. In each of these circumstances the counties with guardianship jurisdiction must decide how they will respond and act in guardianship matters.

- **In the 2000 Judges survey conducted by the Guardianship Alliance, 42 Judges believed that their counties needed new or expanded guardianship programs.**

2. Types of Existing Guardianship Programs in Texas

The paragraphs below summarize the three types of programs currently in existence in Texas that provide guardians for incapacitated persons without family, or friends, and/or funds.

➤ **Local Guardianship Programs**

The first component of the existing statewide approach to providing guardianship services to incapacitated individuals without family, or friends, and/or funds are local programs. Texas has an increasing number of local programs that provide guardianship services and less restrictive alternatives. Twenty one (20) programs located in 57 counties protect the best interest of incapacitated adults when (1) no family members or friends are available and willing and/or unable to qualify as guardian, or (2) in situations wherein the ward has no funds. The funding provided by Guardianship Advisory Board grants has been essential in providing start-up funding to this increased number of local programs.

The local programs have developed in a number of ways. Some of the programs recruit volunteers who serve as guardian under the direction of the program and the volunteers themselves are appointed the guardian. Other programs employ trained staff and the program itself is appointed the guardian. Most of the programs have developed in cooperation with the county judges with guardianship jurisdiction.

A number of counties contract directly with local guardianship programs in their areas to provide needed guardians. Other counties appoint Adult Protective Services “APS” as the guardian for incapacitated individuals

without family, friends, or funds. Some counties do not take any action, citing lack of staff and funds to deal with such situations.

➤ **APS Guardianship Program**

The second component of the current statewide approach to guardianship appointment for incapacitated individuals without willing and qualifiable family or friends or without funds is Adult Protective Services (APS) of the Texas Department of Protective and Regulatory Services (TDPRS) which serves as the guardian under Chapter 48 of the Human Resources Code for (1) incapacitated adults who have been APS clients in cases involving abuse, neglect, or exploitation and (2) in cases involving incapacitated children who are under the conservatorship of Child Protective Services (CPS) of the Texas Department of Protective and Regulatory Services (TDPRS) when these children reach their majority (18 years old). APS is to be appointed guardian as a last resort for individuals when no other alternative guardian exist.

➤ **County Funded In-House Guardianship Programs**

The third component is found in two counties, Harris and Galveston, which both fund in-house county guardianship programs for the individuals as described above. Their county Guardianship Services are appointed guardian, and county employees with specialized training are assigned the task of carrying out guardianship duties for incapacitated individuals in the program.

Example-Appointment of Guardians for Individuals Without Family, Friends, or Funds

Miller is 92 years old. His wife of 62 years died 6 months ago. Miller is proud of his independence and his paid for home. He does not interact with any family members (they all reside in Alaska and have not seen him in 30 years) or neighbors. He has no children. His eyesight and sense of smell are very poor. He eats very little and has lost a great deal of weight. He is experiencing difficulty in paying his bills and as a result his electricity has been disconnected (a utility shut-off notice has been placed on Miller's front door). Neighbors notice this and contact APS. APS sends out staff to investigate the situation. On that same day, Miller confuses water and kerosene and burns his house down. Neighbors and APS staff removed Miller as he refused to voluntarily leave his burning home. He is hospitalized for smoke inhalation. He exhibits disorientation and confusion that does not improve after two weeks. A diagnosis of dementia is made. The hospital contacts the local guardianship court for help when it is time for Miller to be released.

1. If Miller resides in a county that has a local guardianship program, the program or a volunteer in the program is appointed as guardian of the person and estate.
2. If Miller resides in Harris or Galveston County, the county Guardianship Services is appointed guardian of the person and estate.
3. If Miller resides in a county that lacks a guardianship program, any number of actions might occur, depending on the county. APS may be appointed guardian since Miller had been referred to that agency. A judge might also appoint a local attorney, a minister in the community, or a retired nurse who has agreed to be appointed as guardian in situations such as Miller's. The judge might also take no action if the county lacks funds for guardianship costs.

B. Critical Key Factors That Support Need for Increased Funding for Guardianship and Less Restrictive Services

Several significant and critical factors exist that are expected to have a significant impact on existing guardianship services and to increase the need to provide guardians for all incapacitated adult individuals in Texas. A brief description of these factors is as follows:

1. Olmstead v. L. C. Decision – Under this 1999 United States Supreme Court decision states are required to provide community based services for people with disabilities who would otherwise be entitled to institutional services when: (a) the state’s treatment professionals have reasonably determine that such placement is appropriate; (b) the affected persons do not oppose such treatment; and, (c) the placement can be reasonably accommodated, taking into account the resources available in the state and the needs of others who are receiving state-supported disability services.

The plaintiffs in *Olmstead* asserted that their continued institutionalization was a violation of their right under the American with Disabilities Act of 1990(ADA) to live in the most integrated setting appropriate. The Supreme Court agreed and stated directly “Unjustified isolation ...is properly regarded as discrimination based on disability.”

Governor George W. Bush issued Executive Order, GWB 99-2 on September 28,1999 in response to the Olmstead decision. This order stated that community-based alternatives to institutional services advance the best interests of all Texans.

HHSC, in response to the Olmstead decision and Executive Order, GWB 99-2, established the Promoting Independence Advisory Board to submit recommendations to HHSC in support of the HHSC mission of conducting a comprehensive review of all services and support systems available to incapacitated persons and persons with disabilities in Texas. These individuals will be then be assessed for possible placement in integrated community settings. The Promoting Independence Advisory Board is to prepare and present a Report no later than January 9, 2001.

It is anticipated by the Guardianship Advisory Board that a significant number of these assessed individuals who currently reside in institutional settings may require the appointment of a guardian as their legally appointed representative, in order to make any decisions as to those individual’s possible community placement, or to provide the necessary support to carry out the individual’s decision to move into the community.

2. Demographic Trends.

According to the U.S. Census Bureau, 10% of the population in Texas in 1999 was aged 65 or older. The Census Bureau estimates that by 2025

approximately 16% of the population in Texas will be age 65 and over. This is an increase of 62.5% in the age 65 and older population in the state of Texas. The fastest growing part of this population will be in the 85+-population group.

Due to the projected increase in individuals in the 65+ population age group with age related conditions such as Alzheimer's disease and dementia, a number of these individuals will require the appointment of a guardian or less restrictive alternative to guardianship such as a money manager.

3. Lack of Quality Treatment for Nursing Home Residents

The U. S. Senate has conducted a series of hearings in 2000 in order to investigate the poor quality and quantity of care received by many nursing home residents throughout the country.

Government inspectors have reported finding malnourished and physically abused residents in many facilities. Many of these residents are incapacitated to the extent that they are unable to effectively communicate with others as to their situations or preferences. Many of these individuals may require the appointment of guardians to act as advocates on their behalf, and to move them to more appropriate community housing or residential facilities. Some of these individuals lack family members or friends to act as their guardian if the appointment of a guardian is found to be appropriate after an assessment of their capacity has been carried out.

4. Number of Incapacitated Individuals without Guardians

A continuing significant and complicated factor in the development of a statewide guardianship system is the unknown number of incapacitated individuals in Texas without access to needed guardianship or less restrictive services.

Many of these individuals lack family or friends without a significant interest in their well being, or possess family or friends who are unable to qualify as guardian and/or lack the funds to file a guardianship application on behalf of these incapacitated persons with the courts.

5. Increased Legal Costs of Guardianships

The costs of obtaining a guardianship for an incapacitated individual in Texas continue to escalate. Various court costs associated with guardianship Court proceedings vary from county to county, but average at least \$2,000 for a guardianship of the person only in which no property is owned by ward. Many of the family and friends of incapacitated individuals themselves have few resources and therefore find it impossible to undertake the establishment of a guardianship.

The Board's collective experience in guardianship matters leads the Board to believe that a large number of incapacitated individuals in Texas are not

getting the guardianship assistance that they need because (1) family members and friends concerned with them either do not have or do not feel an obligation to, or cannot afford to, pay an attorney to file a guardianship application or have concerns as to possible liability they will incur in taking on the role of guardian; and (2) counties lack guardianship programs that could be appointed guardian in these circumstances for these individuals.

The 2000 survey of Texas judges with guardianship jurisdiction conducted by the Guardianship Alliance revealed that approximately **1019** requests were submitted to courts concerning incapacitated individuals asking that the court initiate an investigation into the need for guardianship for such individuals and, if necessary, to effect the establishment of a court initiated guardianship, Texas Probate Code, Section 683. The County has the responsibility to bear the costs of any guardianship proceeding in this situation.

The survey did not ascertain how many of these requests for a court initiated guardianship that the courts responded to, or how many of the requests actually led to the filing of a guardianship case.

C. Legislative Actions to Increase Availability of Statewide Guardianship Services for Incapacitated Individuals

Both the 75th and 76th Legislatures recognized this need and enacted legislation to begin to address the huge gap that exists between those incapacitated individuals who have guardians and access to guardianship services and those without guardians or guardianship services in Texas.

The 75th Legislature in 1998 provided HHSC with funding to issue grants to local volunteer guardianship programs. In 1998, HHSC issued a RFP, request for proposals, for new guardianship or money management programs, or for existing guardianship programs that wished to expand to serve nearby counties or to serve additional populations of incapacitated individuals. In 1998, a total of \$52,000 of grant funding for one year was provided to five programs. This money was used as seed money for these local programs. This seed money resulted in **205** additional incapacitated individuals receiving guardianship and money management services through these programs.

In 1999, HHSC provided a total of \$90,000 in grant funding for guardianship and money management services. Seven programs offering guardianship and money management services were awarded grants. This seed money resulting in **431** additional incapacitated individuals receiving guardianship and less restrictive alternative services through these programs.

The 76th Legislature in 1999 provided HHSC with \$100,000 per year in 2000 and 2001 to fund programs to provide guardianship services and less restrictive alternatives for incapacitated individuals in Texas.

The Guardianship Advisory Board has taken the position that the increase in HHSC guardianship grant funding to \$100,000 per year is inadequate to bridge the gaps that currently exist in the process of achieving the goal of providing guardians or less restrictive alternatives for all incapacitated individuals in Texas.

D. GUARDIANSHIP ADVISORY BOARD
RECOMMENDATIONS:

It is the position of the Guardianship Advisory Board that the state of Texas must significantly increase the amount of state funding in order to address the of the increasing needs and numbers of incapacitated persons requiring guardianship who reside in Texas and who require guardianship services.

The Guardianship Advisory Board recommended in the 1999 Report that the Legislature appropriate \$5,640,000, which was projected to result in 4700 guardianships at a cost of \$1200 per guardianship. This amount of funding would have enabled every incapacitated individual in Texas to have access to needed services.

In 2000, HHSC submitted an exceptional item budget request that seeks an additional \$1,230,000 for guardianship grants for 2002 -2003. This will increase the amount available for guardianship and less restrictive programs to \$715,000 per year (current budgeted amount of \$100,000 plus an additional \$615,000).

While this amount of funding will not resolve or fix the guardianship system, this funding will provide significant support for the establishment and expansion of programs into many more areas of the state.

1. We, the Guardianship Advisory Board, therefore recommend that the Legislature appropriate an additional \$1,230,000, with total funding of \$1,430,000 for 2002-2003, which is projected to result in an estimated total of 1191 incapacitated individuals receiving guardianship and less restrictive services such as money management in Texas. The Guardianship Advisory Board's requested increase in the amount of funding provided to HHSC for grants will enable the Board to carry out its mission to establish and expand the number of statewide guardianship programs providing guardianship services and less restrictive alternatives to guardianships. More programs will significantly impact and reduce the number of incapacitated individuals in Texas who presently require appropriate services that are not presently available in their area. The Board's LAR in support of increased funding is as follows:

HHSC Guardianship Advisory Board LAR for FY 2002-2003

Texas Health and Human Services Commission

Fiscal Impact Analysis for Key Legislative Funding Issues

I. Issue Summary: Increased Funding for HHSC Guardianship Alliance in Order to Provide More Guardianships for Incapacitated Individuals

Increased funding for guardianship grants is essential. The Guardianship Alliance and APS have identified the following six HHSC regions of the state, Regions 1, 2, 6(rural), 4, 5, and 11- as areas that either have no existing local guardianship programs or areas in which the need for guardianships for incapacitated individuals exceed the ability of the local APS staff to provide all the necessary guardianships in a community.

Several significant issues are involved in the increased need for guardianships in the state of Texas at this time. The assessment of individuals in nursing homes, state schools, and state hospitals as mandated by the United State Supreme Court decision in *Olmstead* is predicted to increase the numbers of individuals who will require guardianships. The numbers of both aging and/or disabled Texans is increasing. More incapacitated individuals are residing in the community in HSC housing. More state Judges are aware of and support the establishment of guardianships programs in their counties.

Guardianship programs have demonstrated a need for seed money and for money to support new programs for a minimum of two years. Increased funding for grants would provide funding for law school programs that provide guardianship services to individuals and families in local communities, grants to encourage pro bono programs to provide legal representation in guardianship proceedings, and funding to counties to support guardianship services. The increase in guardianship program funding will require two additional support staff FTE's. These staff positions are (1) a Qualitative Analyst, and (2) an Administrative Technician. These positions are essential in the development of a statewide network of guardianship programs as systems must be in place to assure adequate monitoring of the grant funding and programs. Staff is necessary to make site visits to all grant recipients to conduct training, to provide technical assistance, and to carry out audits of the programs.

II. Assumptions Used to Determine Fiscal Impact

2 additional FTE's based in Austin, one QA and one administrative technician

1 FTE – director of Guardianship Alliance (present staff member)

Assume statewide travel for director and technician to provide technical assistance to guardianship programs with a number of overnight stays.

Laptop computers

III. FTEs

New FTE's

- 1 QA position
- 1 administrative technician

Current FTE

- 1 director of Guardianship Alliance

Total Staffing costs to be \$155,000/year in salaries plus travel, training and other administrative costs.

Guardianship Advisory Board travel costs estimated to be \$10,500/year at a total cost of \$21,000 for two years.

IV. Method of Finance Assumptions

Funding is requested to:

1. Award **six \$50,000 two year allocation grants of \$25,000/year for two years** to new guardianship programs in target areas of state at a total cost of \$300,000 for two years;
2. Provide **5 grants of \$15,000/year to existing programs** who demonstrate need and capacity at a total cost of \$150,000 for two years; and,
3. Provide **5 grants of \$15,000/year to existing programs** who demonstrate the ability to obtain matching grants at a total cost of \$150,000 for two years;
4. Provide **3 grants of \$30,000/year to law school programs located in the state of Texas** that provide legal representation in guardianship proceedings for the elderly and for indigent individuals at a total cost of \$180,000 for two years;
5. Provide **5 grants of \$15,000 to legal pro bono programs** that provide legal representation in guardianship proceedings for the elderly, the disabled, and for indigent individuals in their communities at a total cost of \$150,000 for two years; and,
6. Provide **10 grants of \$15,000/year to counties** that provide funds for guardianship services at a total cost of \$300,000 for two years.

Total requested for guardianship grants is \$615,000/year and \$1,230,000 for two years.

V. Primary Contact Person on this Issue / Telephone Number

Kathleen Anderson, 424-6599

The Board continues to recommend an increase in the Alliance staff by one additional employee to assist in the travel to the targeted areas of the State to promote the growth of local guardianship programs, to aid in the monitoring of contracts with local programs, and to enable the Guardianship Alliance to increase its educational and technical assistance efforts.

2. The Guardianship Advisory Board recommends that Courts with guardianship jurisdiction receive Legislative funding from the increased HHSC Guardianship Alliance budget in order to partially reimburse counties for the costs associated with Texas Probate Code (TPC) Section 683 court initiated guardianships. This partial reimbursement will encourage increased compliance by Courts with TPC Section 683.

3. The Guardianship Advisory Board recommends that Section 665 of the TPC be amended to allow Courts with guardianship jurisdiction to pay the attorney fees of applicants who are family members or friends of the incapacitated person from county budgets for indigent proposed wards.

4. The Guardianship Advisory Board recommends that Section 682(4) of the TPC be amended to require the pleading to specifically enumerate as to whether the applicant (the proposed guardian) desires to restrict or prohibit the alleged incapacitated person's right to vote, execute a will, trust, or designation of agent under a power of attorney, and to operate a motor vehicle.

5. The Guardianship Advisory Board recommends that Section 684(b)(4) of the TPC be amended to require the court to specifically address in a finding whether the incapacitated person's right to vote, to operate a motor vehicle, or to execute a will, trust, or designation of agent under a power of attorney, is affected by the guardianship, and the extent to which such limitation may be in the best interest of the ward.

6. The Guardianship Advisory Board recommends that Section 687(a)(3) be amended to require the examining physician to address whether the incapacitated person can vote, operate a motor vehicle, or execute a will, trust, or designate an agent under a power of attorney, and the extent to which any such limitation may be in the best interest of the ward.

7. The Guardianship Advisory Board recommends that the Legislature enact a legislation authorizing the transfer of valid out of state guardianships in which the Guardian is in compliance with all required accountings. Texas has experienced many new residents moving into the state. A number of these new residents have been appointed guardian for a family member or friend in another state. There is currently no Texas statute allowing the interstate transfer of guardianships.

The Board is aware of situations such as the following:

- Guardian and Ward were transferred to Texas from Virginia,
- Ward was the Guardian's profoundly mentally retarded child,
- Guardian opened a new guardianship in Texas and then closed the original guardianship in Virginia,

- Guardian was transferred from Texas back to Virginia within six months,
- Guardian reopened a new guardianship in Virginia, and,
- Guardian closed the guardianship in Texas.

The Guardian paid legal fees totaling more than \$6000 for these court proceedings. These funds would have been better spent on the care of the Ward.

8. Finally, the Guardianship Advisory Board recommends that funding be provided for an increase in the training and continued education of the parties involved in the guardianship process. These parties include judges, attorneys, probate clerks, guardians, and the public.

III. INTRODUCTION

A. BACKGROUND

MISSION OF THE GUARDIANSHIP ADVISORY BOARD

The 75th Legislature passed SB 586, effective 9/1/97, which was incorporated into Chapter 531, Subchapter D of the Texas Government Code, establishing the Guardianship Advisory Board to advise HHSC with respect to the following:

- Adoption of minimum standards for the provision of guardianship services by a guardianship program, a guardian within a guardianship program and a private professional guardian;
- Development of a plan to ensure that each incapacitated individual in the State who needs a guardianship or less restrictive assistance to make decisions concerning the incapacitated individual's own welfare and financial affairs receives that assistance; and
- Development of a plan to foster the establishment and growth of local volunteer guardianship programs.

The 76th Legislature passed HB 2641 which amended Chapter 531, effective September 1, 1999, by adding the following additional duties to the Guardianship Advisory Board:

- Advise HHSC and TDPRS with respect to a statewide guardianship program and develop a proposal for a statewide guardianship program; and
- Review and comment on the guardianship policies of all health and human services agencies and recommend changes to the policies the advisory board considers necessary or advisable.

B. GUARDIANSHIP ADVISORY BOARD

The 75th Legislature also created the Guardianship Advisory Board ("the Board"), which originally consisted of 11 members. One member was chosen from each of the health and human services (HHS) regions and was appointed by the Statutory Probate Judges of Texas. The Board's mission was to advise HHSC as to the duties mandated by Chapter 531 of the Texas Government Code. The Board was appointed on December 1, 1997. The Guardianship Advisory Board met for the first time on January 17, 1998.

The Guardianship Advisory Board now consists of 15 members as the 76th Legislature, effective September 1, 1999, expanded the membership of the Board to include three public representatives appointed by the Commissioner of the Texas Health and Human Services Commission (HHSC) and a representative of the Texas Department of Protective and Regulatory Services (TDPRS) appointed by the Board of Protective and Regulatory Services. The expanded Guardianship Advisory Board met for the first time on October 23, 1999. Two members of the Board resigned in 2000. Currently there is one vacancy on the Board as one new member has been appointed to one of the vacancies, and the Probate Judges will appoint another new member in the near future. Chapter 531 of the Texas Government Code is attached to this report as **Appendix A**. The Bylaws of the Guardianship Advisory Board are attached to the report as **Appendix B**.

C. GUARDIANSHIP ALLIANCE OF TEXAS

The term “**Guardianship Alliance of Texas**” was recommended to HHSC by the Guardianship Advisory Board to describe the program and duties assigned to HHSC by Section 531D of the Texas Government Code. The Guardianship Alliance is HHSC’s initiative to coordinate existing guardianship programs and to encourage the growth and expansion of new and existing guardianship programs across the State of Texas. Information as to establishing a local guardianship program is attached to the report as **Appendix C**.

D. COURTS WITH GUARDIANSHIP JURISDICTION

Various Courts in Texas possess jurisdiction in the establishment and oversight of guardianship cases. Depending on the county, the courts with guardianship jurisdiction include constitutional county courts, statutory probate courts, county court at law courts, or district courts. Determination as to which court has jurisdiction is found in the Texas Probate Code (TPC), Chapter 13, Sections 605 and 606.

Section 605 of the TPC states in part:

“The county court has the general jurisdiction of a probate court. The county court shall appoint guardians of minors and other incapacitated persons, grant letters of guardianship, settle accounts of guardians, and transact all business appertaining to estates subject to guardianship, including settlements, partition, and distribution of the estate, including the settlement, partition, and distribution of the estates.”

Section 606 of the TPC states in part:

- (a) The district court has original control and jurisdiction over guardianships and wards under regulations as may be prescribed by law”.

- (b) "In those counties in which there is no statutory probate court, no county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding guardianships, mental health matters, and other matters covered by this chapter shall be filed and heard in the (constitutional) county court, except in contested guardianship matters, the judge of the (constitutional) county court may on the judge's own motion, or shall on the motion of any party to the proceeding, according to the motion, request the assignment of a statutory probate judge to hear the contested part of the proceeding, or transfer the contested part of the proceeding to the district court, which may hear the transferred contested matters as if originally filed in the district court"
- (c) "In those counties in which there is statutory probate court, a county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, all applications, petitions and motions regarding guardianships, mental illness matters, or other matter addressed by this chapter, shall be filed and heard in those courts and the constitutional county court, rather than the district courts, unless otherwise provided by the legislature"
- (d) A statutory probate court has concurrent jurisdiction with the district court in all actions by or against a person in the person's capacity as guardian".

Applications seeking the appointment of a guardian for an adult may be filed in a court located in an alleged incapacitated individual's county of residence, or in the county in which the alleged incapacitated individual is found on the date that a guardianship application is filed on his or her behalf, or in the county in which the estate of the alleged incapacitated person is located. TPC, Section 610.

IV. METHODS TO DEVELOP A STATEWIDE GUARDIANSHIP SYSTEM

In the 1998 Report, the Board outlined a Guardianship Transition Plan for years 2000-2005 in which the Guardianship Advisory Board, the Guardianship Alliance at HHSC, and the Texas Department of Protective and Regulatory Services proposed to work together to:

- (1) Determine the most efficient state structure to administer public guardianship services to incapacitated persons; and,
- (2) Transition from a system that relies on TDPRS-APS to provide guardianship as a last resort and that is funded almost entirely by general revenue, to a system that primarily meets public guardianship needs through local programs that receive some state funds.

The Board and PRS continue to coordinate efforts in the implementation of the Transition Plan. For example in 2000, APS and the Guardianship Alliance coordinated in the process that led to the determination as to which regions of the state demonstrated the greatest need for the establishment of local guardianship programs through the award of HHSC grants.

In the 1998 and 1999 Report, the Board presented the following methods to spur the development of a statewide guardianship system. These methods have included the promotion and growth of local guardianship programs, improvement of court accessibility, and adoption of minimum standards for the operation of local guardianship programs and private professional guardians. The Board continues to use these methods to promote the development of a statewide guardianship system. Below is a description of the methods and the results used by the Board from years 1998-2000.

1. Promote the Creation and Growth of Local Guardianship Programs By Distributing Grants

The Board developed the following five principles to implement this method:

1. Make existing local guardianship programs into full service programs that offer temporary and permanent guardianship services for all people of all ages for any type or level of incapacity and offer a range of less restrictive alternatives to guardianship services, including, but not limited to, money management services.
2. Encourage existing full service local guardianship programs to expand their guardianship and money management programs to nearby counties.

3. Focus on establishing local guardianship programs in the counties where the communities have identified the need.
4. Encourage counties through county funding to financially support local guardianship programs.
5. Use established local guardianship programs, the Texas Guardianship Association, the National Guardianship Association, the National Guardianship Foundation, and the Texas Money Management Program to provide technical assistance to areas expressing an interest in establishing local guardianship and/or money management programs.

2. Improve the Ability of Interested Family and Friends of Incapacitated Individuals to Access Courts

Many friends and relatives of incapacitated individuals are willing and suitable to become guardians for such individuals but they cannot afford to hire attorneys to file guardianship applications and maintain the Court supervision required of those who are serving as guardians in a guardianship. Many social workers at nursing facilities and hospitals are aware of incapacitated individuals who need guardians, but they encounter difficulty in finding someone to serve as guardian for these individuals.

Courts must also increase their accessibility to third parties that are interested in the welfare of certain incapacitated individuals to enable these incapacitated individuals to receive the assistance that they need. See Appendix D, E, and F for the results of the 1998, 1999, and 2000 judicial surveys proving the need for increased accessibility to the courts.

3. Adopt minimum standards for the operation of new and existing local guardianship programs.

In the 1998 Report, the Board included Minimum Standards for Local Guardianship Programs and Private Professional Guardians. The Board also endorsed the National Guardianship Association's Model Code of Ethics and Standards of Practice as the minimum standards for guardians who are part of a local guardianship or private professional guardianship program.

The Board held two public hearings in 2000. One hearing was held in Austin, and the other hearing was held in Corpus Christi. At the hearings the Board heard public comment on the Board's proposed Minimum Standards for Guardianship Programs and for Private Professional Guardians. These standards are needed in order to achieve uniform monitoring standards for guardianships of the person and especially of the estate to ensure that guardians receive the necessary training to properly carry out their duties. Public comment was also received by the Board as to the establishment of the certification on both the state and national level for guardians.

The Board has recommended to HHSC that the Minimum Standards for Guardianship Programs, for Private Professional Guardians, and Ethics be adopted by rule in December 2000.

A. METHOD ONE:
PROMOTE THE CREATION AND GROWTH OF LOCAL
GUARDIANSHIP PROGRAMS

The Board has developed five methods to promote the creation and growth of local guardianship and money management programs through the awarding of grants in the RFP process. SB 586 (75th Leg.) provided that HHSC by rule could distribute grants for the establishment of local guardianship programs. An independent committee chosen by the Board and the Guardianship Alliance reviews grant proposals submitted in response to an RFP and recommends proposals to receive grants to the Board after a through review.

In order to gain a better understanding of the existing guardianship system in Texas, the Board directed the Alliance to conduct two important surveys in 1998-2000, one survey looking at guardianship programs and the other survey dealing with courts with guardianship jurisdiction. The results of the guardianship programs surveys are described below.

GUARDIANSHIP PROGRAM SURVEY RESULTS

1998 Guardianship Program Survey Summary

In April of 1998, the Board directed the Alliance staff to conduct a survey to determine how many guardianship programs existed in Texas and how many incapacitated individuals these programs served. The survey results highlighted the current situation in Texas wherein there is no mandatory continuing education requirement for guardians or guardianship programs.

The 1998 survey revealed that twelve (12) guardianship programs provided guardianship services to 2,205 incapacitated individuals without family support in 85 different counties in Texas.

Six of the guardianship programs primarily used volunteers to provide guardianship services (these programs were located in Ft. Worth, Waco, San Antonio, Dallas, and Laredo), five of the guardianship programs used only paid staff to provide guardianship services (Harris County, Galveston County, El Paso, Abilene, APS-TDPRS) and the Travis County program used both paid staff and volunteers.

The Harris County and Galveston County guardianship programs are county funded and administered programs. Social workers are employed to serve as guardians by these counties.

APS-TDPRS, a state agency, has an in-house guardianship program and contracts with local guardianship programs that provide for guardianships in 100 counties

for (a) individuals who are their clients and who have been victims of abuse, neglect, and exploitation, or, (b) for incapacitated person who were formerly in Children's Protective Services (CPS) conservatorship. APS-TDPRS has been appointed guardian of the person, of the estate, or of both person and estate, as a last resort for their clients in situations where there is no one else available to serve as guardian. APS-TDPRS is not able to serve as guardian for all incapacitated individuals in the state of Texas who have no available family member or friend to serve as guardian.

In 1998, the above programs, with the addition of three stand alone money management programs, provided money management services to 356 individuals as a less restrictive alternative to guardianship. **The 1998 survey results are found in Appendix D.**

1999 Guardianship Program Survey Summary

The Board directed the Alliance to conduct another guardianship program survey in 1999. The 1999 survey revealed that the number of guardianship programs had increased to eighteen (18) programs that provide guardianship services to 2,379 incapacitated individuals without family support in 95 counties in Texas (including APS-TDPRS). Twelve of the guardianship programs primarily use volunteers to provide guardianship services, and five of the guardianship programs (including APS-TDPRS) use solely paid staff to provide guardianship services. These programs, with the addition of four stand alone money management programs, also provided money management services to 294 individuals as a less restrictive alternative to guardianship. **The 1999 survey results are found in Appendix E.**

2000 Guardianship Program Survey

In the 1999 Report, the Board directed the Guardianship Alliance at HHSC to target its efforts in 2000 toward the development of new guardianship programs in the 62 counties identified by Judges in the 1999 Judge's survey and APS as in need of the establishment of programs.

New guardianship programs were established in the following counties: Hood, Somervell, Johnson, Parker, Palo Pinto, Erath, Jefferson, Hardin, and Orange counties. Existing guardianship programs expanded into the following counties: Bell, Coryell, Falls, Leon, Limestone, Freestone, Crockett, Kimball, Menard, McCollough, Sutton, Reagan, Schleicher, Hill, and Cooke counties.

The grant process in 1998, 1999, and 2000 has enabled the HHSC Alliance to distribute \$242,000 in grant funds in order to accomplish the Board's goal of promoting the creation and growth of local guardianship programs. In 2000, as in 1999, this effort was enhanced by the renewal of a grant to HHSC from the Texas Department on Aging of \$28,000 to promote the creation and growth of money management programs in local guardianship programs and in Area Agencies on Aging. **The 2000 survey results are found in Appendix F.**

GUARDIANSHIP GRANTS SUMMARY

1998 Grants to Local Volunteer Guardianship Programs

In 1998, the Board advised HHSC to use \$52,000 of its funding of \$118,000 to provide grants for the establishment and growth of local volunteer guardianship programs. Local judges were informed about the availability of grants in the letter that accompanied the Judicial Guardianship Survey. The availability of grants was also published in the Texas Register, sent to existing local guardianship programs and Area Agencies on Aging. HHSC issued a request for proposals in 1998 for new guardianship or money management programs or for existing guardianship programs that wished to expand to serve nearby counties or to serve additional populations of incapacitated individuals. In response to the seven proposals received, HHSC issued grants in 1998. **Detailed information describing each program is found in Appendix G. The 1998 grants were distributed as follows:**

<u>COUNTIES</u>	<u>GRANT AMOUNT</u>
Williamson	\$15,000
Tarrant	\$15,000
Dallas	\$8,700
Lubbock, Hockley and Dickens	\$6,650
Webb and Zapata	\$6,650
1998 Total	<u>\$52,000</u>

1999 Grants to Local Volunteer Guardianship Programs.

In 1999, the Board advised HHSC to use \$60,000 of its annual budget of about \$135,000 to provide grants to local volunteer guardianship programs. HHSC issued a request for proposals, and received ten proposals. The quality of the proposals was so good that HHSC was able to add an additional \$30,000 from other funds to fund a total of seven proposals. **Appendix H contains a detailed discussion of these grants.** In 1999, HHSC distributed \$90,000 in grants to the following counties and programs. **The 1999 grants were distributed as follows:**

<u>COUNTIES</u>	<u>GRANT AMOUNT</u>
Ellis	\$15,000

Tom Green, Coke, Mason, Sterling Concho, Irion and Reagan	\$15,000
Grayson and Fannin	\$15,000
Guadalupe	\$15,000
Bexar	\$10,000
Denton and Collin	\$10,000
Statewide Money Management Technical Assistance Program	\$10,000
1999	Total
	<u>\$90,000</u>

2000 Grants to Guardianship Programs

In 2000, the Board advised HHSC to use \$100,000 specifically allocated for grant funding in the Guardianship Alliance budget to provide grants to local guardianship programs. The amount of the maximum grant was increased to \$20,000. HHSC issued a request for funding and received eight proposals. Seven of the proposals were funded. In 2000, HHSC distributed \$100,000 in grants to the following counties and programs. **Appendix I contains a detailed description of these grants. The 2000 grants were distributed as follows:**

2000 GRANT AWARD SUMMARY **COUNTIES**

	<u>GRANT AMOUNT</u>
Bexar	\$20,000
Bell and Coryell	\$20,000
Jefferson, Hardin, and Orange	\$20,000
Hood	\$15,000
Crockett, Kimble, Reagan, Menard, Schleicher McCoullough,	\$15,000
Limestone, Freestone, Leon, Falls	\$5,000
Cooke	\$5,000
2000	Total
	<u>\$100,000</u>

Future Plans for Grants

In 2000, guardianship caseloads for local guardianship programs increased from **2041** individuals to **2270** individuals (this number does not include the caseload numbers for APS-TDPRS which increased from **304(1998) to 338(1999) to 416(as of 5/31/00)** in direct delivery guardianships, nor does this number include money management clients), between the years 1999 to 2000 as indicated by guardianship program surveys.

This increase of **229** individuals is an **11%** increase. This may not initially appear to be a greatly significant increase due to the fact that guardianship programs have increased by **43%** since 1998. However, it is the Board experience that guardianship programs take at least three years to develop and to begin serving the guardianship needs of their communities.

Therefore, the Board has advised the Alliance to continue to conduct guardianship program surveys every year to ascertain the growth of guardianship programs. These surveys will enable the Alliance to see if the methods proposed by the Board are effective. The Board has also advised the Alliance to produce a Directory of Guardianship and Money Management Programs in Texas on an annual basis. The initial directory was published in September 1999, and has been distributed to all guardianship programs and other parties who are interested in the development of guardianship programs. The second Directory was published in December 2000.

The Board has been encouraged by the removal of the restriction in SB 586 (75th Leg.) on the **distribution of grants solely to local volunteer** guardianship programs. The Board supported HB 3630 (76th Leg.), which now **allows HHSC to distribute grant funds to any type of local guardianship program.** The Board acknowledges that some Judges believe that volunteer guardianship programs will not work in their counties, and the Board has found that guardianship programs using paid staff to provide guardianship services have proven to be effective in several counties in Texas. The removal of the grant restriction now allows Judges and local communities the opportunity to design their own guardianship programs using any model that they choose. County courts now have the ability to submit proposals for grants to purchase legal services from local attorneys. Attorneys can submit proposals to provide guardianship services for those in need in their local community. One of the successful grant awardees in 2000 was a program sponsored by a County Bar Association.

The Board also supports legislative changes that would enable grant funds to be utilized for Guardianship Certification testing currently conducted by the Texas Guardianship Association and the National Guardianship Association, and to provide the Guardianship Alliance with the funds to produce a brochure and video on guardianships for statewide use in Texas.

The Board has directed the Alliance to publish a request for proposals around February 15, 2001. The total available funding of \$100,000, however, is woefully inadequate at this time. **Therefore, the Board has requested grant funding in the amount of \$1,230,000 for 2002-2003.**

B. METHOD TWO
IMPROVE ACCESSIBILITY TO THE COURT SYSTEM

Judicial Guardianship Surveys

1998 Judicial Guardianship Survey Summary

In 1998, the Board directed the Alliance to also conduct a survey directed at all judges in the state with guardianship jurisdiction. The purpose of the survey was to determine (1) the number of guardianship cases supervised by each court, (2) the number of guardianship cases filed in 1997, and, (3) the number of guardianship cases filed in courts in 1997 where no family members were willing and suitable to serve as guardians.

The survey also asked the judges: a) whom they appointed as guardian when no suitable family member was willing to serve; b) whether their county had a local guardianship program; and, if not, c) whether they thought their county needed a local guardianship program.

- In 1998, 180 of an estimated 300 judges with guardianship jurisdiction responded to the survey. The survey revealed the following results:
- 29,895 existing guardianship cases supervised by Courts
- 3,273 guardianship filings in 1997
- 569 of the 1997 filings had no suitable family members to be appointed guardian

38 Judges thought their counties needed new or expanded local guardianship programs.

The 1998 survey revealed that courts supervised approximately 47,000 active guardianship cases, that about 5,000 new guardianship cases were filed in 1997, and that in 900 out of the 5,000 guardianship cases filed in 1997 (**more than one out of every six filed**), no suitable family member was available to serve as guardian.

When no suitable family member was available to appoint, Judges stated that they would appoint friends, attorneys, accountants, banks, Adult Protective Services, and local guardianship programs as guardians. This is a haphazard and fragmented state of affairs and does not foster professional guardianship services. Many judges stated that whom to appoint as guardian in these situations was a major problem for them.

1999 Judicial Guardianship Survey

In 1999, the Board directed the HHSC Guardianship Alliance to conduct a second Judicial Guardianship Survey of all judges in the State with guardianship jurisdiction. The questions asked in this survey were the same as those in the 1998 survey with the addition of two important questions: "What can the Guardianship Alliance do to help with guardianship matters in your county?" and "Number of

requests to initiate guardianship investigations pursuant to Section 683 of the Texas Probate Code.”

In 1999, 201 out of about 300 judges with guardianship jurisdiction responded to the survey. The survey revealed the following results:

- 27,593 existing guardianship cases supervised by Texas courts;
 - 3,009 guardianship cases filed in 1998;
 - 821 requests for court initiated guardianship under TPC 683;
 - 426 of the 1998 filings had no suitable family member to be guardian;
- 39 Judges believed that their counties needed guardianship programs.**

Based on this survey, the more accurate count for existing guardianship cases was probably closer to 41,000. Approximately 4,500 guardianship cases were filed in 1998. In approximately 650 of these cases filed in 1998, no suitable family member was willing to be appointed as guardian.

2000 Judicial Guardianship Survey

In 2000, the Board directed the HHSC Guardianship Alliance to conduct a third Judicial Guardianship survey. An additional question added to the 2000 survey was” How many of the number of requests to initiate guardianship investigations pursuant to Section 683 of the Texas Probate Code received by your court were due to APS investigations?”

In 2000, 211 of about 300 judges with guardianship jurisdiction responded to the survey. The survey revealed the following results:

- 43,700 existing guardianships supervised by Texas courts;
- 3404 guardianship cases filed in 1999;
- 1019 requests for court initiated guardianship under TPC 683;
- 730 of the 1999 requests had no suitable family member to be appointed guardian;
- 231 guardianships in which APS is the guardian; and,
- 90 of the court initiated guardianships requests were due to APS investigations.

42 Judges believed that their counties needed new or expanded guardianship programs.

Based on the results of this survey, the more accurate count for existing guardianships cases may be closer to 46,000. **Approximately 4,500 guardianship cases were filed in 1999, and in approximately 900 of these cases, no suitable family member was willing or able to be appointed as guardian.** The numbers are higher than those ascertained by the 1999 Judicial Guardianship Survey.

One significant reason for this increase may be due to the fact that Courts and Clerks have become more familiar with these annual surveys requesting information. Courts and Clerks are beginning to keep a more accurate count of the existing guardianship cases that they supervise and a more accurate count of the guardianship cases that are filed each year.

However, the Board still continues to hear from Courts that they do not have an accurate count of the guardianship cases that they must supervise because they lack the staff to go through the numerous files to determine whether wards under guardianship are still living or have died. If courts do not know this basic information, Courts are unable to track when annual reports and accounts of guardians of the person and/or of the estate are due in order to ascertain whether guardians are properly caring for their wards and/or the.

SUMMARY OF JUDGES' SURVEY RESULTS

A significant finding as a result of the judges' surveys stresses the fact that Judges know the right individuals or groups in the community needed to contact to start such programs. This is because only a Judge with guardianship jurisdiction may appoint a guardian, and the Judges are acutely aware of the essential services required in those local communities. A local guardianship program cannot be successful unless the Judge approves of and supports the program. Local Judges were instrumental in the creation of new local guardianship programs in Hood and Jefferson Counties in 2000.

Programs submitting proposals in response to the HHSC Alliance grant RFP are required as part of the process to contact the Judge with guardianship jurisdiction in the county or counties where services will be delivered. The programs must obtain a letter from a Judge stating that the Judge supports the establishment or expansion of the program and attach this letter of support to the proposal.

Another result of these surveys demonstrate the need for local guardianship programs and show that more Judges are becoming aware of this need. The Board is convinced that **local judicial support and increased funding is key** to the development of new local guardianship programs across the State.

Guardianships are concerned with a balancing of fundamental civil rights of liberty and property possessed by each and every individual. Every effort must be made to achieve statewide uniformity in this balancing process.

➤ RECOMMENDED LEGISLATIVE ACTIONS TO ADDRESS COURT AND COST BARRIERS IN GUARDIANSHIPS

- 1. Allow Courts to Pay Family Member or Friend Applicant's Attorney Fees from Budgeted County Funds for Indigent Incapacitated Individuals.**

Many indigent incapacitated individuals in Texas do not have family members or friends serving as their guardian at this time. Family members and friends who are willing and able to serve as guardians for these individuals are often unable to afford to pay attorneys' fees and other legal expenses associated with the guardianship appointment process.

The Board recommended that Section 665 of the Texas Probate Code be amended to **allow** Courts the discretion to pay the attorney fees of guardianship applicants from County funds when the estate of the incapacitated person is insufficient to pay such fees. The 76th legislature responded with HB 2165, which gives the Courts this discretion. The process has been used effectively in El Paso County to encourage family members and friends to become guardians of incapacitated relatives and friends.

2. Encourage Use of Court Initiated Guardianship Process.

It is the position of the Board that in Counties where Courts are proactive in compliance with Section 683 of the Texas Probate Code, incapacitated individuals are better able to get the guardianship and less restrictive assistance they need. Family members, friends, home health workers, and other interested individuals are able to complete information letter and to encourage doctor's to complete physician's certificate concerning the alleged incapacitated person. The information letters are then sent to the court pursuant to the provisions of Section 683 of the Texas Probate Code to give the court probable cause to believe that an alleged incapacitated person resides in the county without the assistance of a guardian. Once the Courts receive these letters, and probable cause has been established, the Courts then have a duty to appoint a Guardian Ad Litem, or Court Investigator, to investigate the need for a guardian and to file a guardianship application if necessary. The Guardian Ad Litem can then investigate whether any family members or friends are suitable and willing to serve as guardians. If no family member or friend is found to serve as guardian, the Guardian Ad Litem can consult a local guardianship program or file an application for a suitable person to be appointed as guardian.

In many cases that are referred to the Courts in this manner, the incapacitated person has sufficient assets to pay for the cost of the guardianship proceedings. The referral source, however, does not have access to these funds to pay an attorney to file an application and the referral source is unable to serve as guardian. In those cases wherein the incapacitated individual does not have sufficient assets to pay for the costs of the guardianship proceeding, the county is obliged to pay the fees of the guardian ad litem and attorney ad litem out of the county treasury.

To encourage the use of court initiated guardianship, the Board supported the idea of clarifying section 683 of the Texas Probate Code to provide that a Court could require the receipt of an information letter and/or a physician's

certificate to establish probable cause before appointing a guardian ad litem or court investigator to investigate the need for a guardianship. The 76th Legislature responded by passing HB 2165 which added Section 683 to the Texas Probate Code that allows a Court to require a statutory form information letter and/or a physician's certificate under Section 687 of the Texas Probate Code before appointing a guardian ad litem or court investigator to investigate the need for a guardianship or less restrictive assistance.

Court initiated guardianship is used to varying degrees by the Statutory Probate Courts across the state. Court initiated guardianship is not widely used by the County Courts with guardianship jurisdiction across the state. Many County Courts judges consider Section 683 of the Texas Probate Code to be an unfunded state mandate on the counties. Some County Court judges, however, have approached their Commissioner's Courts asking for specific funds to allow them to establish court initiated guardianship policies.

In the 1998 Report, the Board suggested that funds be provided to the Alliance at HHSC to allow the Alliance to partially reimburse counties for some of the expenses of court initiated guardianships. The Board received no response from the 76th Legislature on this idea, and no funds were provided to the Alliance for this purpose. The Board continues to support this idea as a way to encourage more County Court judges to comply with Section 683 of the Texas Probate Code because without court initiated guardianships, courts have no way of knowing the number of individuals in their counties who may need guardianship or less restrictive assistance.

C. METHOD THREE:
ADOPT MINIMUM STANDARDS FOR THE OPERATION
OF
NEW AND EXISTING LOCAL GUARDIANSHIP
PROGRAMS

1998 Report

The 1998 Report contained a copy of the minimum standards for local guardianship programs and for private professional guardians. These standards are attached to this report as **Appendix G**. The 1998 Report also contained a copy of the minimum standards for guardians who are a part of a local guardianship program or a private professional guardianship program. These standards are attached to this report as **Appendix H**. The Board recommends that these standards be adopted by rule.

Adoption of Standards

These standards were presented at the 1998 annual conference of the Texas Guardianship Association for review by the existing local guardianship programs. The 1998 Report suggested that these standards be adopted by the Legislature into statute. Legislative counsel informed the Alliance that it would be better to have HHSC adopt these standards by Rule.

The Board attached the recommended minimum standards to the request for proposals that was issued by the Alliance in 1999 and 2000. Prospective grantees were asked to review the minimum standards and include a statement in their proposals that they would comply with these minimum standards and any amendments when the standards were later adopted by HHSC by Rule.

The Board held two public hearings in 2000, in Corpus Christi and in Austin, in order to allow the public, including local guardianship programs, to comment on the proposed minimum standards before HHSC began the process of adopting the minimum standards by Rule. HHSC is to adopt these minimum standards by rule in December 2000. In addition, the Board recommends that these Minimum Standards should also be legislatively adopted in this upcoming session.

Board review of Guardianship Policies of State Agencies

The Board continues an ongoing review of the guardianship policies of state agencies. The Guardianship Alliance has formed an interagency guardianship workgroup, which is in the process of reviewing guardianship policies.

V. INCREASED FUNDING IS KEY ESSENTIAL IN THE CONTINUED DEVELOPMENT OF THE STATEWIDE GUARDIANSHIP SYSTEM

The development of a statewide guardianship system in Texas is at a crossroads at this time. New mandates imposed on the provision of guardianship services in Texas may have a huge impact on current guardianship programs in terms of both funding and staffing requirements. It is imperative that the State of Texas develops an effective statewide guardianship program.

The Board believes that a number of persons residing in nursing facilities may be partially or totally incapacitated. These individuals currently lack guardians to assist them in making needed residential, financial, or end of life decisions.

Many courts are not aware of this need because it has not been effectively communicated to the Courts. Many incapacitated individuals may not receive timely medical attention or may continue to live in inappropriate settings without the assistance of guardians. Until local judges become aware of this need, more pressing concerns will continue to receive attention and funding to the exclusion of the needs of these incapacitated individuals.

More and more guardianships are being obtained for young adults when they reach their majority at the age of eighteen. Many of the family of these young adults lack the funds necessary to be appointed guardian, and Courts are often appointing guardianship programs. More funding must be made available to aid these families in this situation.

The Board believes that Texas is fortunate to have so many individuals and programs at the State and local levels working on guardianship matters at this time. The Board's main goal of the next two years will be to better coordinate these individuals and programs and to obtain more funding for them so that they can serve more of the incapacitated individuals in Texas who need guardianship services.

In the 1998 Report, the Board determined that there were at least 2,345 incapacitated individuals in Texas that could use the services of local guardianship programs. The Board estimated that there existed an equal number of individuals could use money management services as a less restrictive alternative to guardianship services. The Board estimated in 1998 that approximately 4,700 individuals needed the assistance of local guardianship programs, at an estimated cost of \$1,500 a year for individuals in a local guardianship program. Money management services were estimated at a cost of \$900 per client per year. This is an average of \$1,200 per individual assisted with either guardianship or money management services. Providing services for these 4,700 individuals would therefore cost \$5,640,000.

In 1998 HHSC was able to issue \$52,000 in grants for guardianship and less restrictive services. In the 1998 Report, the Board proposed a plan that would provide guardianship and money management services for these 4,700 individuals in 6 years. This plan would have required at least a \$250,000 increase in the amount of grants that HHSC can make to local guardianship programs each year.

In 1999, HHSC issued \$80,000 in grants to local guardianship programs to fund proposals to provide guardianship and money management services to 189 individuals. In the 1999 Report, the Board proposed a plan that would provide 4,700 individuals with guardianship and money management services if \$5,640,000 were provided for grants. The 1999 Report pointed out that the equal protection of the fundamental rights of these individuals required that the present funding of the guardianship and money management services by the state must be significantly increased.

In this, the 2000 Report, the Board recommends that the Legislature support the HHSC exceptional item budget request for an additional \$615,000 per year for 2003 and 2004 for guardianship and less restrictive services. This amount of funding would provide guardianship and less restrictive services for 1191 incapacitated individuals.

The Board also seeks to increase the Guardianship Alliance by at least one additional staff member.

The Board thanks the HHSC Commissioner and staff for their support in the submission of the Alliance's exceptional item legislative request of \$1,230,000 in order to significantly increase the amount of grants to local guardianship programs. The Board also requests that the Governor and members of the Legislature receiving this report support this request for increased funds.

Sec. 531.1235. ADVISORY BOARD; ADDITIONAL DUTIES; STATEWIDE GUARDIANSHIP SYSTEM.

- (a) In addition to performing the duties described by Section 531.122, the advisory board shall:
- (1) advise the commission and the Department of Protective and Regulatory Services with respect to a statewide guardianship program and develop a proposal for a statewide guardianship program; and
 - (2) review and comment on the guardianship policies of all health and human services agencies and recommend changes to the policies the advisory board considers necessary or advisable.
- (b) The advisory board shall prepare an annual report with respect to the recommendations of the advisory board under Subsection (a). The advisory board shall file the report with the commission, the Department of Protective and Regulatory Services, the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each year.

Sec. 531.124. DUTIES.

- (a) With the advice of the advisory board, the commission shall:
- (1) adopt minimum standards for the provision of guardianship and related services by:
 - (A) a guardianship program;
 - (B) a person who provides guardianship and related services on behalf of a guardianship program or local guardianship center, including a person who serves as a volunteer guardian; and
 - (C) a person who serves as a private professional guardian; and
 - (2) develop and, subject to appropriations, implement a plan to:
 - (A) ensure that each incapacitated individual in this state who needs a guardianship or another less restrictive type of assistance to make decisions concerning the incapacitated individual's own welfare and financial affairs receives that assistance; and
 - (B) foster the establishment and growth of local volunteer guardianship programs.

- (b) The commission shall design the standards under Subsection (a)(1) to protect the interests of an incapacitated individual or other individual who needs assistance in making decisions concerning the individual's own welfare or financial affairs.
- (c) The advisory board shall annually review and comment on the minimum standards adopted under Subsection (a)(1) and the plan implemented under Subsection (a)(2) and shall include its conclusions in the report submitted under Section 531.1235.

Sec. 531.125. GRANTS.

The commission by rule may award grants to:

- (1) a local guardianship program; and
- (2) a local legal guardianship program to enable low-income family members and friends to have legal representation in court if they are willing and able to be appointed guardians of proposed wards who are indigent.

**BYLAWS OF THE
GUARDIANSHIP ADVISORY BOARD**

Adopted on the 7th day of August, 1999

**ARTICLE I
NAME**

The name of this organization is the GUARDIANSHIP ADVISORY BOARD.

**ARTICLE II
LEGAL AUTHORITY**

The Guardianship Advisory Board was created under the authority of Chapter 531, Subchapter D of the Texas Government Code, which became effective September 1, 1997, as amended by H.B. 2641 (76th Leg.) effective September 1, 1999.

**ARTICLE III
PURPOSE**

The Guardianship Advisory Board shall advise the Texas Health & Human Services Commission ("HHSC") in:

- A. adopting minimum standards for the provision of guardianship and related services by:
 - 1. a guardianship program;
 - 2. a person who provides guardianship and related services on behalf of a guardianship program or local guardianship center, including a person who serves as a volunteer guardian; and
 - 3. a person who serves as a private professional guardian; and
- B. developing and subject to appropriations, implementing a plan to:
 - 1. ensure that each incapacitated individual in Texas who needs a guardianship or less restrictive type of assistance to make decisions concerning the incapacitated individual's own welfare and financial affairs receives that assistance; and
 - 2. foster the establishment and growth of local guardianship programs.

In addition, the Guardianship Advisory Board shall:

- C. advise HHSC and the Texas Department of Protective and Regulatory Services ("PRS") with respect to a statewide guardianship program and develop a proposal for a statewide guardianship program;
- D. review and comment on the guardianship policies of all Texas health and human services agencies and recommend changes to the policies that are necessary or advisable; and
- E. prepare an annual report with respect to recommendations of the Guardianship Advisory Board on matters contained in paragraphs C and D above, and file

the report with HHSC, PRS, the governor, the lieutenant governor and the speaker of the house of representatives not later than December 15th of each year.

ARTICLE IV **MEMBERSHIP**

A. Regional Representatives.

The Guardianship Advisory Board is composed of one representative from each of the health and human services regions (currently eleven), as defined by HHSC, who is appointed by a majority vote of the judges of the statutory probate courts in each region. If a health and human services region does not have a statutory probate court, the representative shall be appointed by a majority vote of the judges of the statutory probate courts in Texas. To be eligible for an appointment as a local representative, an individual must have demonstrated experience working with a guardianship program, working with incapacitated individuals, or working with an organization that advocates on behalf of or in the interest of elderly individuals or individuals with mental illness or mental retardation. A local representative serves at the pleasure of a majority of the judges of the statutory probate courts that appointed that representative.

B. Public Representatives.

The Guardianship Advisory Board is also composed of three public representatives who are appointed by the Commissioner of HHSC. To be eligible for an appointment as a public representative, an individual must have demonstrated experience working with a guardianship program, working with incapacitated individuals, or working with an organization that advocates on behalf of or in the interest of elderly individuals or individuals with mental illness or mental retardation. Each public representative serves at the pleasure of the Commissioner of HHSC.

C. Agency Representative.

The Guardianship Advisory Board is also composed of one agency representative of the Texas Department of Protective and Regulatory Services ("PRS") who is appointed by the Board of PRS. To be eligible for an appointment as an agency representative, an individual must have demonstrated experience working with a guardianship program, working with incapacitated individuals, or working with an organization that advocates on behalf of or in the interest of elderly individuals or individuals with mental illness or mental retardation. The agency representative serves at the pleasure of the Board of PRS.

ARTICLE V **TERMS OF MEMBERSHIP**

All representatives on the Guardianship Advisory Board serve at the pleasure of those individuals who appointed the representative as stated above. However, the term of membership for a representative is two years from the date the representative was appointed to the Guardianship Advisory Board. At the end of each term, the

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representative shall contact, in writing, the current Chair of the Board and the current presiding judge of the Statutory Probate Court Judges to state whether the representative wishes to be appointed to another two-year term or wishes to resign. If a representative fails to contact these individuals at the end of any term, the Chair of the Board shall make a reasonable effort to contact the representative to ascertain the representative's intentions. If the representative cannot be contacted after a reasonable time, the Chair of the Board may assume that the representative wishes to resign from the Guardianship Advisory Board and may so inform the presiding judge of the Statutory Probate Court Judges. A new representative shall be appointed as if the representative resigned from the Board. No representative may serve more than three consecutive two-year terms.

ARTICLE VI **REPLACEMENT DUE TO RESIGNATION OR DEATH**

If any representative on the Guardianship Advisory Board wishes to resign, the representative shall contact, in writing, the current Chair of the Board and the current presiding judge of the Statutory Probate Court Judges. If any representative on the Guardianship Advisory Board dies, the Chair of the Guardianship Advisory Board shall contact in writing the current presiding judge of the Statutory Probate Court Judges. The presiding judge of the Statutory Probate Court Judges shall then contact the individuals listed in Article IV of these bylaws who are required to appoint a new representative to take the place of the deceased or resigning representative. These individuals shall, as soon as possible thereafter, appoint a successor representative and shall contact in writing the Chair of the Guardianship Advisory Board and the presiding judge of the Statutory Probate Court Judges with the name of the successor representative.

ARTICLE VII **REPLACEMENT DUE TO LACK OF ATTENDANCE**

Representatives are required to make an effort to attend all meetings of the Guardianship Advisory Board. A representative is responsible for contacting the Director of the Guardianship Alliance prior to the meeting if the representative is unable to attend the meeting. If any representative misses three consecutive meetings, the Director of the Guardianship Alliance shall send a written notice to the representative, and to Chair of the Board, and to the presiding Judge of the Statutory Probate Court Judges. If a representative misses four consecutive meetings, the representative will be discharged from Guardianship Advisory Board and the Chair of the Board shall send written notice to the presiding judge of the Statutory Probate Courts requesting that a successor representative be appointed.

ARTICLE VIII
CONFLICTS OF INTEREST OR ETHICAL VIOLATIONS

A conflict of interest may exist where a representative is directly or indirectly a party to a transaction if the other part to the transaction is an entity in which the representative has a material financial interest of which the representative is a director, officer or general partner. Where possible conflicts of interest exist relative to any matter presented to the Guardianship Advisory Board for consideration, the representative thereby affected shall ensure that the materials of the transaction are known or disclosed to the representatives who authorize, approve or ratify the transaction. Where the Chair of the Board finds that a conflict of interest exists, the affected representative will not vote on the matter. Participation in discussions on the matter is at the discretion of the Chair of the Board. The presence of a representative who is directly or indirectly a party to a transaction, or a representative who is otherwise not disinterested, shall be counted in determining whether a quorum is present, but shall not be counted when the Board takes action on the transaction. If any representative, or other interested party, believes that a representative has an ongoing conflict of interest in serving on the Guardianship Advisory Board, or that a representative has made an ethical violation pertaining to the representative's service on the Board, the accusing representative or interested party shall contact in writing the presiding judge of the Statutory Probate Courts who shall investigate such allegations within a reasonable time and send a written report of the findings of the investigation to the Chair of the Board. If the presiding judge of the Statutory Probate Courts had a vote in the appointment of the representative, the vice-presiding judge of the Statutory Probate Courts shall investigate such allegations and report such findings to the Chair of the Board. If the Chair of the Board is the alleged perpetrator, the presiding judge or vice-presiding judge of the Statutory Probate Courts shall report the findings of the investigation to the Vice-Chair of the Board. The presiding judge of the Statutory Probate Courts has the authority to set rules regarding the dismissal of representatives for ongoing conflicts of interest or ethical violations.

ARTICLE IX
RESPONSIBILITIES OF MEMBERS

Guardianship Advisory Board representatives are expected to perform the following tasks:

1. maintain a broad perspective that takes the needs of all incapacitated persons, guardianship programs, state agencies and local courts into consideration;
2. review agendas and other information sent by the Guardianship Alliance Director prior to the meetings and participate in discussions at meetings;
3. participate in developing a statewide guardianship plan and review and comment on guardianship policies of all health and human service agencies and recommend changes to the policies;
4. make contact with local courts, local and regional guardianship program staff, advocates, interest groups, and others, as appropriate, to discuss guardianship and less

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- restrictive alternative services issues, and relay pertinent information from such groups to the board;
5. relay pertinent information from meetings to local courts, local and regional guardianship program staff, advocates, interest groups, and others as appropriate;
 6. attend all meetings;
 7. maintain a level of integrity that warrants public trust;
 8. abstain from voting on issues that would provide monetary gain or that present a conflict of interest with other activities in which you are involved in other capacities; and
 9. submit travel expenses in a timely manner.

ARTICLE X **OFFICERS AND EXECUTIVE COMMITTEE**

At the first meeting of every even numbered calendar year, the Board shall elect a chair, a vice-chair and a secretary who will comprise the Executive Committee of the Guardianship Advisory Board. The Executive Committee shall function as a steering committee and may act on behalf of the Guardianship Advisory Board in emergency situations between meetings. Representatives may serve consecutive terms as officers. The Chair is not eligible to serve as chair of a subcommittee of the Guardianship Advisory Board. Nominations for officers shall be accepted from the floor by the serving Chair at the last meeting of every odd numbered calendar year. Voting will be done by written ballot from each representative in attendance at the first meeting of every even numbered year provided that a quorum is then present. The Guardianship Alliance Director will collect and count the ballots. If a representative is nominated by a majority of the written ballots, the representative is elected. If no one representative receives a simple majority of the ballots, the nominee who received the lowest number of ballots is dropped and the members cast written ballots with the remaining nominees. This procedure is repeated until a nominee receives a majority of the votes. A representative may not hold more than one office. A vacancy in any office because of death, resignation, removal or disqualification of a representative may be filled by a vote of the Guardianship Advisory Board at the next regularly scheduled meeting.

ARTICLE XI **DUTIES OF OFFICERS**

- A. CHAIR.** The Chair shall:
1. preside at all Guardianship Advisory Board meetings;
 2. provide democratic leadership;
 3. be sensitive to the views and opinions of individual representative, promote and maintain a participatory environment in which representatives have ample opportunity to express their views freely;
 4. confer with the Guardianship Alliance Director to prepare suitable agendas, plan Board activities, establish meeting dates or conference calls, establish subcommittees and ad hoc committees, appoint representatives to serve on subcommittees, workgroups and ad hoc committees;

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5. represent the Board in public hearings and other events; and
6. serve as leader of the Executive Committee.

B. VICE-CHAIR. The Vice-Chair shall perform the same functions as the Chair in the Chair's absence. The Vice-Chair is also a member of the Executive Committee of the Guardianship Advisory Board, which functions as a steering committee, and may act on behalf of the Board in emergency situations between meetings.

C. SECRETARY. The Secretary shall be in charge of reviewing the minutes of the meeting as prepared by the Guardianship Alliance Director and ensuring that such minutes accurately reflect the content of the meetings of the Guardianship Advisory Board. The Secretary is also a member of the Executive Committee of the Guardianship Advisory Board, which functions as a steering committee, and may act on behalf of the Board in emergency situations between meetings.

ARTICLE XII **SUBCOMMITTEES**

As the need arises, the Chair may appoint special subcommittees, workgroups and ad hoc committees. Members of subcommittees are not required to be representatives of the Board, but a representative of the Board must be the chair of any such subcommittee.

ARTICLE XIII **COMPENSATION**

A representative on the Guardianship Advisory Board is not entitled to compensation but is entitled to reimbursement for travel expenses in the same manner as state employees in accordance with the General Appropriations Act except that representatives will not be entitled to a per diem allowance.

ARTICLE XIV **OPERATIONAL PROCEDURES**

Meetings of the Guardianship Advisory Board will be held at least six times per calendar year. Meeting times will be set by the Chair at the preceding meeting, and shall be communicated to all representatives by the Guardianship Alliance Director. Eight representatives of the Guardianship Advisory Board present at a called meeting shall constitute a quorum. If less than a quorum of the Board is present, action items may not be considered and a majority of the representatives present may adjourn the meeting. The act of a majority of the representatives present at a meeting at which a quorum is present shall be the act of the Guardianship Advisory Board. In emergency situations between called meetings, the act of a majority of the Executive Committee shall be the act of the Guardianship Advisory Board. Meetings will be conducted in accordance with Robert's Rules of Order. The Chair, the Guardianship Alliance Director and HHSC staff will confer regarding the development of the agendas for the meetings. Findings and recommendations of the Guardianship Advisory Board will be forwarded to HHSC or, if

appropriate, to the boards of other health and human services agencies affected by such findings or recommendations by the Guardianship Alliance Director. The Chair shall forward all findings or recommendations of the Guardianship Advisory Board that need to be forwarded to a member of the Legislature.

ARTICLE XV
ADOPTION OF AND REVISION TO RULES

The presiding judge of the Texas Statutory Probate Courts may adopt rules as necessary for the operation of the Guardianship Advisory Board. Therefore, the signature of the presiding judge of the Texas Statutory Probate Courts is on these bylaws. These bylaws may be altered, amended, or repealed at any time by vote of not less than two-thirds of the representatives of the Guardianship Advisory Board present provided there is a quorum at any regular or special meeting thereof; provided, however, that no alteration, amendment or repeal of any of these bylaws shall be valid unless written notice of the subject of the proposed amendment shall be mailed to each representative of the Board not less than twenty-one (21) days prior to the date of the meeting. The presiding judge of the Texas Statutory Probate Courts must then approve any alteration, amendment or repeal of these bylaws.

ARTICLE XVI
EFFECTIVE DATE

These bylaws were passed by unanimous vote of those representatives of the Guardianship Advisory Board present at a regular meeting held on the 7th day of August, 1999. These bylaws shall become effective as of the date they are adopted by the presiding judge of the Statutory Probate Court Judges which is set forth below.

Judge Patrick W. Ferchill, Co-Chair, Guardianship Advisory Board

Deborah Green, Co-Chair, Guardianship Advisory Board

These bylaws are hereby adopted by me on this ____ day of _____, 1999, under the authority of Section 531.122(e) of the Texas Government Code as rules necessary for the operation of the Guardianship Advisory Board.

Judge Guy Herman, Presiding Judge, Texas Statutory Probate Courts

HOW TO START A LOCAL GUARDIANSHIP PROGRAM

By Kathleen Anderson, Alliance Director
Guardianship Alliance of Texas
Texas Health & Human Services Commission
HHSC

Thank you for your interest in local guardianship programs. Almost every local guardianship program in Texas was developed at the request or behest of a local court with guardianship jurisdiction. Judges are often presented with situations where guardians are needed, where Adult Protective Services cannot be appointed as guardian¹, and where no suitable family members or friends are available to serve. This paper is intended as a summary of the steps involved in starting a local guardianship program to provide guardians in these situations and to provide money management services as a less restrictive alternative to guardianship services.

THREE COMPONENTS OF LOCAL GUARDIANSHIP PROGRAMS

The following three components must simultaneously occur for the creation of a local guardianship program:

1. Incapacitated individuals who need guardians or money management services;
2. Persons who are willing to provide guardianship or money management services; and
3. A method to have guardians appointed by the court.

A guardianship program is an organization that recruits, trains and supervises volunteers or paid staff for the purpose of providing guardianship or money management services to incapacitated individuals who do not have family support.

I. INCAPACITATED INDIVIDUALS WHO NEED GUARDIANS OR MONEY MANAGEMENT SERVICES.

This is usually the component that occurs first and creates the need for the other two components. Many individuals are placed in nursing homes or state schools and then lose touch with family members. Some individuals outlive all their close family members, but have neighbors who look in on them. These facilities, neighbors, hospitals or Adult Protective Services often contact the Court when an individual is found who needs a guardian to make medical, residential or financial decisions.

Courts respond in different ways to these notifications. A common court response has been to tell the reporter that they need to contact an attorney to file a guardianship application with the court. This response normally creates a roadblock because these

¹ Under Chapter 48 of the Human Resources Code, the Texas Department of Protective and Regulatory Services (commonly known as “Adult Protective Services”) may only be appointed as guardian for those individuals aging out of Child Protective Services and in cases involving abuse, neglect or exploitation.

incapacitated individuals are mostly indigent and receive only social security benefits. Another common court response is to direct the reporter to contact Adult Protective Services to investigate. This response is the correct response if the situation involves abuse, neglect or exploitation. If the alleged incapacitated person is in a nursing facility or hospital, Adult Protective Services will rarely investigate these cases unless financial exploitation is alleged. An alternative court response is court-initiated guardianship that is explained later in this document under paragraph III. If your court has been receiving a number of these calls, your county probably needs a local guardianship program.

Most guardianship programs were created after an initial meeting of individuals knowledgeable about guardianship law and services such as Court personnel, current guardians, local attorneys and advocates for incapacitated persons, and representatives of organizations in the community that are involved in the delivery of services to elderly and disabled individuals. These organizations include Adult Protective Services, Department of Mental Health/Mental Retardation, Area Agency on Aging, Senior Citizens Services, United Way, local nursing facilities, and local hospitals. These organizations are familiar with the need for guardians in the community and will also later refer many individuals for guardianship or money management services to the court or guardianship program. You should discuss the need for a local guardianship program at this meeting and discuss the appointment of a director to organize and maintain the day to day operations of the program.

STEP 1. Develop a list of Local Task Force Members, and set a date for an initial meeting to discuss the need for and development of a Local Guardianship Program.

II. PERSONS TO PROVIDE GUARDIANSHIP AND MONEY MANAGEMENT SERVICES.

If you have been appointing guardians for very long, you probably know several individuals who are serving as guardians for non-family members. These individuals probably volunteered at your request when the Court needed someone to serve as a guardian. If you don't have time to find volunteers for every case of this type that comes across your desk, you probably need a local guardianship program. Most people who volunteer to serve as guardians will also enjoy the educational and moral support of a guardianship program where they can discuss different experiences and problems with other individuals who may have encountered similar circumstances. It may also be that your county does not have a sufficient number of individuals who would volunteer to provide guardianship services. If so, you may want to consider a different type of guardianship program.

A. Types of Programs.

When discussing the development of a guardianship program, you should examine what type of guardianship program would be the most suitable for your community. Current local guardianship programs are of five types:

1. **Non-profit using Volunteers and Paid Staff.** These programs have 501c3 status as non-profit organizations. Paid staff members provide guardianship services for the more difficult cases and recruit and train volunteers to assist in providing guardianship and money management services for other cases. These programs are named as guardian thus allowing the programs to accept fees for service from the estates of wards with assets. This also requires less court involvement when volunteers leave the program. Examples of this type of program are: Family Eldercare, Inc., Travis and Williamson Counties; Guardianship Services, Inc., Tarrant County; and Friends for Life, McLennan and eight other surrounding Counties (soon to expand to four other counties).
2. **Non-profit using Volunteers.** These programs have 501c3 status as non-profit organizations. A paid director recruits and trains and supervises volunteers who are individually appointed as guardians or money managers. An example of this type of program is Senior Citizens Services of Dallas County.
3. **Non-profit using Paid Staff.** These programs have 501c3 status as non-profit organizations. The program is appointed as guardian, and paid staff members handle multiple guardianship cases. An example of this type of program is Lulac Project Amistad, El Paso County.
4. **Private Professional Guardianship Programs.** These programs operate for-profit corporations, and the program is named as guardian. Attorneys and social workers are usually involved in these programs and the program often serves as guardian of the person and estate. Examples of this type of program are: Covenant Outreach, LLC, Taylor County; Southwest Guardianship and Estate Services, Inc., El Paso County.
5. **County-Managed Programs.** These programs are part of local county governments, and county-paid social workers serve as guardians for multiple wards. Examples of this type of program are the Harris County Guardianship Program and the Galveston County Guardianship Program.

B. Single County or Multi-County Guardianship Programs.

Your task force should also consider whether your county has enough need for guardianship and money management services to support its own guardianship program. The Alliance has determined that the average cost to a guardianship program to maintain a guardianship case for one year is about \$1,250. Therefore, it takes about 20 cases to support a full time staff member at a salary of \$25,000 (20 x \$1,250). To determine how many guardianship program type cases exist in your county, the Alliance has developed a Guardianship Program Factor based on the population of those counties with full service guardianship programs and easy guardianship access to the court system. This Guardianship Program Factor is .000234. You can determine the number of guardianship cases your program can expect to maintain once it is established (after about three years) by multiplying the Guardianship Program Factor (.000234) by the population of the

county or counties that your guardianship program will serve. Therefore if your county has a population of 100,000, you can expect to have about 23 cases after your guardianship program has been in operation for about three years. You could also expect that the annual budget of your program would need to be about \$28,750 (23 x \$1,250). Of course these are only estimates and the actual number of cases in any given county or area may vary based on numerous factors including the percentage of elderly population in the county or the existence of a State School or State Hospital in the county. If you believe that your county doesn't have the population to support its own guardianship program, you might want to consider the following options:

- 1. Invite an Existing Guardianship Program to Serve Clients in Your County.** Williamson County is an example of a county that adopted this alternative. In 1998, Family Eldercare, Inc., an existing guardianship program serving Travis County was invited to accept guardianship appointments in Williamson County. After establishing a local task force and working with the Court, Family Eldercare, Inc., submitted a proposal to the Guardianship Alliance and received a grant of \$15,000 to provide guardianship and money management services in Williamson County. This process might involve some funding or other in-kind consideration from county to the existing guardianship program.
- 2. Contact the Council of Governments serving your County.** Hockley County is an example of a county that adopted this alternative. Judge Sprowls of Hockley County brought the need for a guardianship program before the South Plains Council of Governments. South Plains agreed that a guardianship program was needed for Lubbock, Hockley and Dickens counties and submitted a proposal to the Guardianship Alliance and received a grant of \$6,650 in 1998. South Plains is starting out by establishing a money management program through the Texas Money Management Program.
- 3. Contact an Existing Service Agency in your County.** Tom Green County is an example of a county that adopted this alternative. Judge Brown of Tom Green County contacted ARC of San Angelo to develop a guardianship program. ARC sent a proposal to the Guardianship Alliance for a guardianship and money management program to serve a seven county area including Tom Green County and received a grant of \$15,000 in 1999. Texoma Area Agency on Aging is another example of this method. Texoma AAA sent a proposal for a guardianship and money management program to serve Grayson and Fanin Counties and received a grant of \$15,000 in 1999 from the Guardianship Alliance. Agencies that serve senior citizens have also developed guardianship programs in Dallas, Tarrant and Guadalupe Counties.

C. Fiscal Status.

The Guardianship Alliance does not specifically endorse any one type of local guardianship program. The Alliance encourages local control and encourages communities to establish the type of local guardianship program that will work best in

their communities. Each type of guardianship program listed above has proven to be effective in the provision of guardianship services to incapacitated individuals without family support. In 1998 and 1999, the law allowed the Alliance to provide grant funds for local “volunteer” guardianship programs only. The 76th Legislature enacted changes that will now allow the Alliance to provide grants to any type of local guardianship program. The only requirement is that the local guardianship program be a fiscal agent or be affiliated with a fiscal agent. This means that your guardianship program should be a 501c3 non-profit organization, a for-profit corporation, a part of the county government, or affiliated with one of these types of organizations. This status will also allow your program to raise operating funds from the county and local foundations or corporations.

D. Funding for Guardianship Programs.

Almost all local guardianship programs have found that a paid full time director is a necessity. Guardianship programs also need office space from which to operate and to recruit and train those individuals who will be providing guardianship and money management services. These items require annual funding. Existing guardianship programs receive funds from county contracts, local foundations, individual contributions, fees for service from wards’ estates, VOCA grants, local fund raisers, bingo operations, contracts with regional Adult Protective Services department, contracts with local MHMR departments, and grants from the Guardianship Alliance.

County contributions to local guardianship programs range in amount from Harris County, which contributes \$1.35 million, to Ellis County, which contributes \$10,000. Counties contribute to local guardianship programs for different reasons. Tarrant County, which contributes \$60,000 to Guardianship Services, Inc., for example, believes that the existence of a local guardianship program actually reduces indigent health care costs in the County by preventing unnecessary emergency medical treatment of incapacitated persons who, without guardians, would continue to live independently in unsafe conditions. Over the next few years, funds from the State’s Tobacco Settlement will be coming to Counties for indigent health care. Therefore, this is an ideal time to approach your County Commissioners for funds to develop a local guardianship program.

In 1998, Judge Bob Carroll of Ellis County went before the Ellis County Commissioners’ Court and asked for funds to allow court compliance with Texas Probate Code 683 (discussed below) and to coordinate volunteers to serve as guardians when family members were not suitable or available to serve. Ellis County budgeted \$10,000 for these purposes. In 1999, the Ellis County Volunteer Guardianship Program submitted a proposal to provide guardianship and money management services in Ellis County and was awarded a grant of \$15,000 from the Guardianship Alliance. As for in-kind contributions, counties have been known to provide office space, office equipment and phone services for local guardianship programs.

Section 665(d) of the TPC provides counties with an alternative way to fund local guardianship programs on a per case basis. This section was effective as on September 1, 1999 and provides that “if the estate of a ward is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as guardian of the ward’s

person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.” Most local guardianship programs register with the court as private professional guardians. This allows them to take commissions or fees for services from wards with estates. This new bill allows the county to budget funds to pay local guardianship programs a fee for serving as guardian of the person if the estate of the ward is insufficient to pay for these services. Therefore, counties now have a choice between a lump sum contract or budgeting funds for the judge to pay for guardianship services on a per case basis. This bill was proposed by the Guardianship Advisory Board, a 15-member board with one representative from different regions of the State, that advises the Guardianship Alliance.

E. Technical Assistance for Guardianship Programs.

To decide what type of program will work best for your County, you or your program director may want to contact the directors of the various guardianship programs across the State. Most of these program directors have been operating guardianship programs for many years and a few of them started guardianship programs from scratch. The following two organizations also exist as educational resources for guardianship programs:

1. **Texas Guardianship Association.**

President: Inez Russell Waco, TX
Contact Person: Association Director
Phone: (254) 399-9115; Fax: (254) 399-9599
Address: P. O. Box 24037, Waco, TX 76702-4037
Annual Conference: November 6, 2000, San Antonio, TX

2. **National Guardianship Association.**

President: Terry Hammond, El Paso, TX
Contact Person: Laury D. Adsit, Executive Director
E-Mail: ladsit@mgmtplus.com
Phone: (520) 881-6561; Fax: (520) 325-7925
Address: 1604 N. Country Club Rd., Tucson, AZ 85716-3102
Annual Conference: October 28-November 1, 2000, Albuquerque, NM

Please also feel free to contact the Guardianship Alliance with any questions that you have. The contact information is as follows:

Guardianship Alliance of Texas

Texas Health & Human Services Commission

Contact Person: Kathleen W. Anderson, J.D., Alliance Director
E-Mail: kathleen.anderson@hhsc.state.tx.us
Phone: (512) 424-6599; Fax: (512) 424-6589
Address: 4900 N. Lamar, 4th Fl., Austin, TX 78751

F. Technical Assistance for Money Management Programs.

Most guardianship programs have developed less restrictive services that they offer as an alternative to guardianship services. Many elderly or disabled individuals can continue to live independently if someone is available to pay their bills and manage their monthly income. Therefore, most guardianship programs offer money management services. Some guardianship programs have developed their own independent money management programs to use volunteers or staff members to serve as representative payees or bill payers for clients who don't need guardianship services. Many guardianship programs have developed money management programs with the assistance of the Texas Money Management Program which is a joint venture between AARP and Family Eldercare, Inc., Austin, TX. The Texas Money Management Program will recruit volunteer money managers in your county or area by mailing informative letters about your program to as many as 6,000 people in your area. The Program will then assist you in training the volunteers and their supervisors with a system of safeguards to assure the integrity of the program. AARP also provides \$10,000 in insurance for the volunteer and \$10,000 insurance to the program for each volunteer. Your program is required to file quarterly reports with AARP. To obtain further information, contact:

**Texas Money Management Program
Family Eldercare, Inc.**

Contact Person: Barbara Ellis
Phone: (512) 424-6532; Fax (512) 424-6589
E-mail: barbara.ellis@hhsc.state.tx.us
HHSC 4900 N. Lamar, 4th floor.
Austin, TX 78751

STEP 2. After meeting with Task Force members and visiting with other guardianship program directors, decide what type of guardianship and/or money management program will work best for your county or area, and discuss available funding and the hiring of a director for your local guardianship program.

III. A METHOD TO HAVE GUARDIANS APPOINTED BY THE COURT.

Once you have discovered that incapacitated individuals reside in your county without guardians, and you have established a structure to recruit and train persons to be guardians and money managers, the only remaining component is a method to have the guardianship program or its volunteers appointed by the Court. Currently, guardianship programs use the following methods to have guardians from local guardianship programs appointed:

A. Court Initiated Guardianship. In 1993, Section 683 was added to the Texas Probate Code to allow interested persons to provide probable cause to courts

to show that an incapacitated individual resides in the county without a guardian. When presented with probable cause, the court is required to appoint a guardian ad litem or court investigator to investigate the need for a guardian and file an application for guardianship if necessary. Section 683(b), added to the TPC in 1999, allows courts to require additional information to establish probable cause that an incapacitated individual resides in the county without a guardian. Courts are allowed to require an information letter (Section 683A) and/or a doctor's letter to establish probable cause that the individual is incapacitated. A generic court initiated guardianship policy is attached. Judges who have used this procedure to allow court initiated guardianship under TPC 683 have been astounded at the need for guardians for incapacitated individuals in their counties. Since most county courts don't have court investigators, you may be limited to appointing attorneys or social workers as guardian ad litem to investigate the need for guardianship. Because of the uncertainty of the number and the circumstances of each case, Judges who have adopted a court initiated guardianship policy have usually set a flat fee for guardian ad litem or attorney ad litem fees that must be paid from the county treasury when the proposed ward has no estate. If the guardian ad litem is unable to find a suitable family member to serve as guardian, the guardian ad litem attorney can file an application to appoint a suitable person as guardian and contact the local guardianship program to inquire whether the program or one of its volunteers could be appointed as guardian. The court will then appoint an attorney ad litem to represent the proposed ward, and a hearing will be held on the application.

- B. Pro-Bono Attorneys.** Many local guardianship programs use pro-bono attorneys to file guardianship applications to have the program appointed as guardian. A common method is for the court to appoint a representative of the program as guardian ad litem to investigate the need for a guardianship when the court becomes aware that an individual may be incapacitated and need a guardian. If the guardian ad litem finds a suitable family member to serve, the family member is encouraged to hire an attorney (and is usually given the names of the program's pro-bono attorneys) to file a guardianship application. If no family member is found, the pro-bono attorney for the program files an application to have the program appointed as guardian. The court then appoints an attorney ad litem to represent the proposed ward. If the proposed ward has assets, the program's attorney can be paid out of the ward's estate.

STEP 3. Develop procedures to investigate circumstances and file guardianship applications where guardianships may be needed and to appoint the Local Guardianship Program or its volunteers as guardian if no suitable family member or friend is available to serve as guardian.

APPENDIX D - 1998 GUARDIANSHIP SURVEY

The 1998 survey revealed the following guardianship programs (listed from largest to smallest), the city where the program offices were located, number of counties where clients were located, the type of program, and the number of guardianship clients that each program served:

Program	Location	Counties	Type of Program	GS Clients
Harris County Program	Houston	1	Paid Staff	1,109
Adult Protective Services	Austin	87*	Paid Staff **	304
	*In all 254 counties in Texas			
Lulac Project Amistad	El Paso	1	Paid Staff	144
Volunteer Guardians	Fort Worth	1	Volunteer	158
Family Eldercare	Austin	1	Volunteer/Paid	140
Galveston County Program	Galveston	1	Paid Staff	121
Guardianship Services	San Antonio	1	Volunteer	108
Friends for Life	Waco	5	Volunteer	56
Senior Citizens Services	Dallas	1	Volunteer	33
Covenant Outreach	Abilene	3	Private Professional	9
Laredo Guardian Vol.	Laredo	2	Volunteer	8
Jewish Family Services	Dallas	1	Volunteer	2

APPENDIX E - 1999 GUARDIANSHIP SURVEY

The 1999 survey revealed the following guardianship programs (listed from largest to smallest), the city where the program offices were located, number of counties where clients were located, the type of program, and the number of guardianship that each program served: (new programs since 1998 in bold).

Growth of Local Guardianship Programs in 1999.

Program	Location	Counties	Type of Program	GS Clients
Harris County Program	Houston	1	Paid Staff	1,227
Adult Protective Services	Austin	87*	Paid Staff**	338
*In all 254 counties in Texas				
Guardianship Services	Fort Worth	1	Paid Staff/Volunteer	183
Family Eldercare	Austin	2	Volunteer/Paid	158
Galveston County	Galveston	1	Paid Staff	115
Lulac Project Amistad	El Paso	1	Paid Staff	106
Friends for Life	Waco	5	Volunteer	76
Family Service Assoc.	San Antonio	1	Volunteer	50
Jewish Family Services	San Antonio	1	Volunteer	50
Senior Citizens Services	Dallas	1	Volunteer	30
Laredo Guardian Vol.	Laredo	2	Volunteer	21
Ellis County Volunteer	Waxahachie	1	Volunteer	13
Covenant Outreach	Abilene	3	Private Professional	9
Jewish Family Services	Dallas	1	Volunteer	3
South Plains Assoc.	Lubbock	3	Volunteer	0
Texoma AAA	Sherman	2	Volunteer	0
GRASP	Univ. City	1	Volunteer	0
GA Concho Valley	San Angelo	7	Volunteer	0

APPENDIX F - 2000 GUARDIANSHIP SURVEY

The 2000 survey revealed the following guardianship programs (listed from largest to smallest), the city where the program offices were located, number of counties where clients were located, the type of program, and the number of guardianship that each program served: (new programs since 1999 in bold).

Growth of Local Guardianship Programs in 2000.

Program	Location	Counties	Type of Program	GS Clients
Harris County Program	Houston	1	Paid Staff	1,225
Adult Protective Services	Austin	100*	Paid Staff	416**
*In all 254 counties in Texas				
**Number as of 5/31/00				
Guardianship Services	Fort Worth	1	Paid Staff/Volunteer	252
Family Eldercare	Austin	4	Volunteer/Paid	246
Friends for Life	Waco	12	Volunteer	112
Lulac Project Amistad	El Paso	1	Paid Staff	106
Galveston County	Galveston	1	Paid Staff	100
Jewish Family Services	San Antonio	1	Volunteer	55
Family Service Assoc.	San Antonio	1	Volunteer	50
Senior Citizens Services	Dallas	2	Volunteer	30
Laredo Guardian Vol.	Laredo	2	Volunteer	21
Covenant Outreach	Abilene	6	Private Professional	21
Ellis County Volunteer	Waxahachie	1	Volunteer	15
GA Concho Valley	San Angelo	13	Volunteer	15
Nor-Cen-Tex	Hood	6	Volunteer	3
Jewish Family Services	Dallas	1	Volunteer	2
South Plains Assoc.	Lubbock	3	Volunteer	0
Texoma AAA	Sherman	3	Volunteer	0
North Central Texas AAA	Arlington	2	Volunteer	0
Golden Triangle RSPV	Nederland	3	Volunteer	0

APPENDIX G - 1998 GRANTS TO LOCAL VOLUNTEER PROGRAMS

1. **Williamson County.** A \$15,000 grant was awarded to Family Eldercare, Inc., (Austin) to provide guardianship and money management services to an estimated 30 individuals in Williamson County. This is an **example of the second principle – encouraging full service programs to expand services to nearby counties.** Family Eldercare, Inc., is a full service local guardianship program with its main office in Travis County. This is also an **example of the third principle – focus on counties where the county judge has identified the need.** Judge Henderson and Judge Morse each stated that Williamson County needed a local guardianship program. These Judges consulted with Family Eldercare, Inc., and decided to ask Family Eldercare, Inc., to expand its services into Williamson County. Family Eldercare, Inc. then recruited volunteers in Williamson County to assist in the provision of guardianship and money management services in Williamson County.

2. **Tarrant County.** A \$15,000 grant was awarded to Guardianship Services (formerly Volunteer Guardians, Fort Worth) to expand guardianship services to an estimated 40 incapacitated individuals under the age of 60 in Tarrant County. This is an **example of the first principle – making existing programs into full service programs.** Guardianship Services, Inc., was initially a program that primarily served incapacitated individuals age 60 and over in Tarrant County. This grant allowed Guardianship Services, Inc., to expand its services to incapacitated individuals age 18 and above. It also allowed Guardianship Services, Inc., to hire a supervisor for guardianship cases that involve incapacitated adults with mental health or mental retardation diagnoses. This grant is also an **example of the fourth principle – encouraging counties to support local guardianship programs.** When Guardianship Services, Inc., expanded its program to serve incapacitated adults of all ages, the Tarrant County Commissioner's Court increased the amount of county funding for the program from \$30,000 to \$60,000.

3. **Dallas County.** A \$8,700 grant was awarded to Senior Citizens Services of Greater Dallas Volunteer Guardianship Program (Dallas) to expand its program to include money management services for an estimated 20 individuals in Dallas County. This grant is an **example of the first principle – making existing programs into full service programs.** This grant allowed Senior Citizens Services to hire a money management program director and to recruit volunteers to provide money management services. The program then decided to use the technical assistance provided by the Texas Money Management

County. This is an **example of the first principle – making existing programs into full service programs.** Guardianship Services, Inc., was initially a program that primarily served incapacitated individuals age 60 and over in Tarrant County. This grant allowed Guardianship Services, Inc., to expand its services to incapacitated individuals age 18 and above. It also allowed Guardianship Services, Inc., to hire a supervisor for guardianship cases that involve incapacitated adults with mental health or mental retardation diagnoses. This grant is also an **example of the fourth principle – encouraging counties to support local guardianship programs.** When Family Eldercare, Inc., (Austin) to provide guardianship and money management services to an estimated 30 individuals in Williamson County. This is an **example of the second principle – encouraging full service programs to expand services to nearby counties.** Family Eldercare, Inc., is a full service local guardianship program with its main office in Travis County. This is also an **example of the third principle – focus on counties where the county judge has identified the need.** Judge Henderson and Judge Morse each stated that Williamson County needed a local guardianship program. These Judges consulted with Family Eldercare, Inc., and decided to ask Family Eldercare, Inc., to expand its services into Williamson County. Family Eldercare, Inc. then recruited volunteers in Williamson County to assist in the provision of guardianship and money management services in Williamson County.

4. Lubbock, Hockley & Dickens Counties. A \$6,650 grant was awarded to South Plains Association of Governments (Lubbock) to begin providing money management services to an estimated 10 individuals in Lubbock, Hockley and Dickens Counties. This is an example of the **third principle – focus on the counties where the county judges have identified the need.** Judge Sprowls from Hockley County believed that his county needed a local guardianship program and brought the matter before this council of governments. Judge McArthur in Dickens County believed that his county needed a local guardianship program as well. Due to the small amount of funds, South Plains decided to begin with money management services and then add guardianship services later. This program is also using the Texas Money Management Program. This grant is therefore also an **example of the fifth principle – use established programs such as Texas Money Management Program to provide technical assistance.**

5. Webb & Zapata Counties. A grant of \$6,650 was awarded to Laredo Guardian Volunteers, Inc., (Laredo) to expand its provision of guardianship services to an estimated 10 individuals in Webb and Zapata Counties. This grant is an example of the **fifth principle – use of Texas Guardianship Association, the National Guardianship Association, and the National Guardianship Foundation to provide**

technical assistance. This program has been in existence since 1990, but had no contact with the other local guardianship programs and was unknown to them. After receiving this grant, Mr. Oscar Garza, Jr., the founder and director of the program attended the Texas Guardianship Association conference and became a registered guardian through the National Guardianship Foundation. Mr. Garza attended the National Guardianship Association conference this year and took the exam to become a Master Registered Guardian. Since receiving this grant, the caseload of Laredo Guardian Volunteers, Inc. has grown from 8 cases to 21 cases, almost tripling in size.

APPENDIX H- 1999 GRANTS TO LOCAL VOLUNTEER PROGRAMS

1. **Ellis County.** A grant of \$15,000 was awarded to Ellis County to assist in the development of its new Ellis County Volunteer Guardianship Program to provide guardianship and money management services to an estimated 30 individuals in Ellis County. This program is an example of the **third principle – focus on the counties where the county judge has identified the need; the fourth principle – encouraging counties to support local guardianship programs; and the fifth principle – encourage counties to use TPC 683 to initiate guardianships.** Judge Bob Carroll approached the Ellis County Commissioners' Court in 1998 and requested and received \$10,000 to enable him to comply with TPC 683 and to initiate guardianship investigations when presented with probable cause that an incapacitated person lives in Ellis County without a guardian. Judge Carroll then encouraged the development of the Ellis County Volunteer Guardianship Program to supply volunteers to be appointed as guardians when no family member or friend was willing or suitable to serve as guardian. This program then applied for and was awarded a grant to continue its efforts in Ellis County.
2. **Tom Green, Coke, Mason, Sterling, Concho, Irion & Reagan Counties.** A grant of \$15,000 was awarded to the ARC of San Angelo to assist in the development of its new Guardianship Alliance of Concho Valley to provide guardianship and money management services to an estimated 39 individuals primarily in Tom Green County but also in Coke, Mason, Sterling, Concho, Irion and Reagan Counties as needed. This program is another example of the **third principle – focus on the counties where the county judge has identified the need for a local guardianship program.** These counties are in HHS Region 9, which did not have any local guardianship programs. Judge Mike Brown, a member of the Board, saw the need for a local guardianship program to serve Tom Green and the surrounding counties. He then contacted the ARC of San Angelo and encouraged them to develop a proposal for a local guardianship program to serve these counties. Judge Brown also contacted judges of nearby counties to ascertain whether their counties needed a local guardianship program. The development of this program also exemplifies the **fourth principle – encourage counties to support local guardianship programs** – because Judge Brown committed to asking his Commissioners' Court for funds to assist in the development of this program. The program is off to a great start and has developed a local task force that includes over 25 community leaders and services providers to incapacitated individuals. This is also the first entrée for the ARC into the guardian services arena.

3. **Grayson & Fannin Counties.** A grant of \$15,000 was awarded to the Texoma Area Agency on Aging (Sherman) to assist in the development of a local volunteer guardianship program to provide guardianship and money management services to 25 individuals in Grayson and Fannin Counties. This program is an example of the **third principle – focus on counties where PRS has identified a need for a local guardianship program.** This proposal stated that the PRS guardianship worker had reached maximum caseload and that either a local guardianship program or another PRS guardianship worker would be needed for these counties. This is the first entrée for Area Agencies on Aging into the guardianship services arena. This grant also involved the **sixth principle – use established local guardianship programs to provide technical assistance.** Janis Thompson, the director of Texoma AAA contacted Colleen Colton and Karen Littlejohn, directors of two established local guardianship programs, to gather information before submitting the program's proposal. The Board encourages this type of open communication between established programs and new start-up programs as a way to keep Alliance administrative costs at a minimum. This allows the Alliance to distribute more of its budgeted funds as grants to local guardianship programs. This inter-program communication also promotes the use of best practices and methods among the new guardianship programs.

4. **Guadalupe County.** A grant of \$15,000 was awarded to the Greater Randolph Area Services Program (Universal City) to assist in the development of a local volunteer program to provide guardianship and money management services to 30 individuals in Guadalupe County. The development of this program involves the **sixth principle – use Texas Guardianship Association as an educational resource.** The director of this program, Lynn Blanco, attended the Texas Guardianship Association annual conference in 1998. After hearing the Alliance Director speak at the annual conference, Ms. Blanco decided to submit a proposal for a local guardianship program. She met with Judge Sagebiel who stated his support for a local guardianship program in Guadalupe County. Therefore, the **third principle – focus on counties where the county judge has identified a need for a local guardianship program** – is also involved in this grant.

5. **Bexar County.** A grant of \$10,000 was awarded to Family Services Association (San Antonio) to provide money management services to an estimated 25 individuals in Bexar County. This grant is an example of the **first principle – making existing programs into full service programs.** Family Service Association has a

contract with PRS to provide guardianship services for approximately 60 guardianship client referrals. The addition of money management services will allow the program to offer a less restrictive alternative to guardianship as well.

6. **Denton & Collin Counties.** A grant of \$10,000 was awarded to North Central Area Agency on Aging (Arlington) to provide money management services to an estimated 40 individuals in Denton and Collin Counties. This grant is an example of **third principle – focus on counties where the county judge has identified a need for a local guardianship program.** Judge Windle, Judge Lewis and Judge Barry all responded to the Judicial Guardianship Survey that they thought their counties needed a local guardianship program. In the past, many guardianship programs started by first offering guardianship services and added money management services later. The Board believes that local guardianship programs can also start by first providing money management services and then adding guardianship services at a later date. This is another entrée for the Area Agencies on Aging into the provision of money management services and hopefully later adding guardianship services.

7. **Statewide Money Management Technical Assistance.** A grant of \$10,000 was awarded to Texas Money Management Program (Austin) to provide technical assistance regarding the delivery of money management services to at least five new money management sites. This grant is an example of the **sixth principle – use of established programs such as the Texas Money Management Program to provide technical assistance.** The award of this grant was coupled with the award of a grant \$28,000 from the Texas Department on Aging to HHSC to contract with a statewide money management technical assistance provider. Texas Money Management was also awarded this contract and now has an office at HHSC to better coordinate efforts with the Alliance. The grant from the Texas Department on Aging instructed the provider to focus efforts on starting money management programs in conjunction with local guardianship programs and within Area Agencies on Aging. This provision fits perfectly with the Board's **first principle – making existing programs into full service programs.**

APPENDIX I-2000 GRANTS TO LOCAL PROGRAMS

1. A grant of \$15,000 was awarded to **Nor-Cen-Tex Guardianship Services, sponsored by the Hood County Bar Association, a new program**, to assist in the development of its new Guardianship Program to provide guardianship and money management services to an estimated 19 individuals initially in Hood County (with possible expansion as the need arises to the adjacent counties of Somervell, Johnson, Parker, Palo Pinto, and Erath). **The program already has three guardianship cases using three volunteers. HHSC Region 3**
2. A grant of \$15,000 was awarded to the **ARC of San Angelo** to assist in the expansion of its Guardianship Alliance of Concho Valley to provide guardianship and money management services to an estimated 49 individuals in thirteen counties-Tom Green, Coke, Mason, Sterling, Concho, Irion, Kimble, Menard, McCulloch, Schleicher, Sterling, Sutton, and Reagan. **HHSC Region 9**
3. A grant of \$5,000 was awarded to the **Texoma Volunteer Guardianship Program**, sponsored by the Texoma Area Agency on Aging (Sherman) to assist in the continued expansion and development of its local guardianship program to provide guardianship services for 55 individuals, and money management services to 75 individuals in Cooke, Grayson and Fannin Counties. **HHSC Region 3**
4. A grant of \$20,000 was awarded to the **Golden Triangle RSVP, a member of the Southeast Texas Guardianship Alliance, a new program**, in the development of a local program to provide guardianship and money management services to 60 individuals in Jefferson, Hardin, and Orange Counties. **HHSC Region 5.**
5. A grant of \$20,000 was awarded to **Jewish Family and Children's Services** for guardianship services to an estimated 250 individuals in Bexar County. **HHSC Region 8**
6. A grant of \$20,000 was awarded to **Friends for Life, (Waco)**, for expansion into Bell and Coryell Counties with less restrictive money management services to 120 individuals. The program currently serves 13 guardianship clients in those counties. **HHSC Region 7**
7. A grant of \$5,000 was awarded to **Friends for Life, (Waco)**, for expansion into Falls, Limestone, Freestone, and Leon Counties with less restrictive money management services for 150 individuals. The program currently serves as guardian for 12 wards in these counties. **HHSC Region 7**

**PROPOSED
MODEL STANDARDS
FOR GUARDIANSHIP PROGRAMS
IN TEXAS**

CHAPTER ONE: DEFINITIONS AND REGULATIONS

1.01 DEFINITIONS. The following definitions will be used throughout these standards.

- (a) **Guardianship Program.** A guardianship program is a plan or system developed and implemented by an individual or entity on a local, county or regional basis to provide guardianship services and less restrictive alternatives to guardianship services to an incapacitated person or other person who needs assistance in making decisions concerning the person's housing, medical and/or financial affairs.
- (b) **Less Restrictive Alternatives.** Less restrictive alternatives to guardianship may include, but are not limited to, money management services, including bill payer and representative payee services, case management, and services provided pursuant to a financial or health care power of attorney.
- (c) **Clients.** This term includes incapacitated persons and those persons receiving less restrictive alternative services from a guardianship program.

1.02 APPLICABILITY OF STANDARDS TO GUARDIANSHIP PROGRAMS.

- (a) **Applicability:** These standards are applicable to all Guardianship Programs, regardless of size, location or model of service delivery.
- (b) **Probationary Period:** Programs in existence at the time these standards are adopted shall bring themselves into compliance with these standards within one year of the date of adoption of these standards. All new programs shall bring themselves into compliance with these standards within one year of the date the first client receives services. In the case of guardianship services, that date shall be the guardian's qualification date. For non-guardianship services, the first client will be deemed to be receiving services as of the date of the intake interview.

1.03 PENALTY FOR NON-COMPLIANCE WITH STANDARDS

Except during a probationary period as defined in section 1.02 above, a Guardianship Program that is not currently registered with the Guardianship Alliance of Texas and has not shown evidence of compliance with the Guardianship Program Standards will not be eligible for funding or technical assistance from the Guardianship Alliance of Texas.

1.04 REGISTRATION

In addition to any requirement to register as a Private Professional Guardian pursuant to Section 697 of the Texas Probate Code, all existing guardianship programs must register annually during the month of December with the Guardianship Alliance of Texas and provide evidence of compliance with these standards as well as any statistics required by the Guardianship Alliance of Texas. In order to provide evidence of compliance with these standards and to collect these statistics, the Guardianship Alliance of Texas shall send registration forms by November 15th of each year to existing guardianship programs or upon the request of any newly formed guardianship program. Newly formed guardianship programs shall

APPENDIX J - Proposed Model Standards for Guardianship Programs in Texas

register within four months of accepting its first guardianship appointment or its first less restrictive alternative client.

CHAPTER TWO: FISCAL MATTERS

2.01 FORM OF ENTITY.

Each guardianship program shall prepare and maintain an organizational chart that clearly reveals who is responsible for decision making within the program. A guardianship program that exists within the framework of a larger organization shall prepare and maintain an organizational chart that clearly reveals the guardianship program's degree of decision-making autonomy within the larger organization.

2.02 FISCAL RESPONSIBILITY.

A guardianship program has the following two distinct types of fiscal responsibility:

- (a) **Funding Sources.** A guardianship program shall maintain the fiscal standards required by its form of entity. All freestanding guardianship programs shall follow general accounting procedures and be able to produce proof that general accounting standards are followed. Guardianship programs that exist within the framework of a larger organization shall maintain the budget and financial functions required by funding sources and/or the larger organization's management.
- (b) **Clients.** The fiscal responsibility of a guardianship program to its clients is governed by the Texas Probate Code and enforced by the Court that appoints the guardianship program or its members to serve as guardian.

2.03 BUDGET.

A guardianship program shall maintain procedures to annually develop, fund and oversee a budget that is adequate to meet the guardianship and less restrictive alternative needs of its clients.

2.04 INSURANCE.

A guardianship program shall protect the entity itself, board members, employees, volunteers and clients by maintaining an periodic procedure for a risk management analysis and by either obtaining appropriate insurance or by providing other protections as determined by the guardianship program.

2.05 FEES FOR SERVICES.

A guardianship program shall maintain a procedure for exploring third party payment options before charging fees for services to clients. Any fees from an incapacitated person's funds must receive prior approval from the judge having jurisdiction over the guardianship. No person needing guardianship or less restrictive alternative to guardianship services should be denied these services because of such person's inability to pay for such services.

2.06 GUARDIANSHIP BONDS.

A guardianship program shall establish a policy for and the means to supply and maintain guardianship bonds as required by the Court. These policies should insure that no qualification of a guardian is delayed due to lack of a bond. A guardianship program should determine when

APPENDIX J - Proposed Model Standards for Guardianship Programs in Texas

selecting and recruiting its employees and volunteers whether and to what extent the person to be appointed as guardian is eligible to be bonded.

CHAPTER THREE: PERSONNEL MATTERS

3.01 ACCOUNTABILITY FOR MEMBER'S ACTIONS.

A guardianship program shall make itself accountable for the actions of its employees and volunteers. A guardianship program shall not adopt any policy or procedure which has the purpose of shifting liability imposed by law on the guardianship program to an individual employee or volunteer.

3.02 SCREENING SERVICE PROVIDERS.

A guardianship program shall perform criminal background checks and reference checks on each employee or volunteer who will either work or currently works directly with clients or who will have or currently has access to clients' assets or the confidential information of clients. No such employee or volunteer may provide any services to a client before the guardianship program has completed these checks. No person who is described in either Section 678 or Section 681 of the Texas Probate Code shall be a volunteer for or employed by a guardianship program in a position that allows access to clients, clients' assets or clients' confidential information. If a guardianship program recruits a volunteer or hires an employee who has a criminal record, the guardianship program shall advise the judge of any court in whose jurisdiction that individual may be providing services.

3.03 CONFIDENTIALITY.

A guardianship program shall develop and maintain procedures to insure the confidentiality of client information. These procedures should, at a minimum, include requiring employees and volunteers to sign confidentiality agreements, securing client records, and training employees and volunteers on confidentiality issues.

3.04 SUPERVISION OF EMPLOYEES AND VOLUNTEERS.

A guardianship program shall develop and maintain procedures to provide ongoing supervision of all employees and volunteers who provide services to clients regardless of whether an individual or the guardianship program is appointed as guardian. Supervisory procedures shall provide for training, monitoring and evaluation of employees and volunteers that is consistent with these standards.

3.05 COMMUNITY INVOLVEMENT.

A guardianship program should strive to attain community involvement in the guardianship program by identifying and involving those persons who or agencies that provide services of any nature to those populations served by the guardianship program. A guardianship program should consider the creation of a local advisory committee that consists of such persons or representatives from such agencies to provide advice and guidance to the guardianship program.

CHAPTER FOUR: CLIENT SERVICES.

4.01 LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP.

APPENDIX J - Proposed Model Standards for Guardianship Programs in Texas

A guardianship program shall protect the rights and autonomy of clients and potential clients by promoting the use of less restrictive alternatives to guardianship whenever such alternatives are in the best interests of the client or potential client. A guardianship shall either offer these alternatives or refer potential clients to other programs that offer these alternatives. Whenever a guardianship is in the best interests of a potential client, a guardianship program shall advocate for the best interests of the potential client to insure that the court grants the guardian only those powers necessary and limits the potential client's rights only to the extent necessary to protect the health, safety and resources of the potential client.

4.02 SERVICE LEVELS.

A guardianship program shall develop and maintain procedures to provide an adequate level of services to all clients regardless of whether the program uses paid employees, volunteers or both employees and volunteers. A guardianship program shall maintain an adequate number of employees and/or volunteers to appropriately manage the care of its clients.

4.03 ROLE OF VOLUNTEERS.

A guardianship program may use volunteers in a variety of roles, which include, but are not limited to, the following:

- (a) guardians of the person and/or estate of clients;
- (b) representative payees or bill payers;
- (c) agents of the guardianship program that is appointed as guardian;
- (d) to visit, transport or provide other services to the client on behalf of the appointed guardian; or
- (e) staff positions.

4.04 STAFFING REQUIREMENTS.

A guardianship program shall have a program director who is responsible for the development and management of the guardianship program on a daily basis. Program directors are encouraged to become certified by the National Guardianship Association as a Registered Guardian. Guardianship program staff may be either employees or volunteers, and staff qualifications may vary among the guardianship programs. A guardianship program shall develop job descriptions for all staff outlining the duties and responsibilities of all staff members. Job requirements for education and experience shall be commensurate with duties and responsibilities and shall be comparable to requirements for other positions in the community with similar duties and responsibilities.

4.05 TRAINING REQUIREMENTS.

A guardianship program shall provide initial and ongoing training on guardianship and less restrictive alternatives for employees and volunteers. Training topics shall include, but not be limited to, guardianship laws, disability and aging issues, medical treatment, medication issues, end of life decisions, housing alternatives, money management alternatives and case management techniques.

APPENDIX J - Proposed Model Standards for Guardianship Programs in Texas

4.06 CONFLICTS OF INTEREST.

A guardianship program shall develop procedures and policies to avoid potential conflicts of interest, and such procedures and policies should promote the best interests of the clients of the guardianship program as the guardianship program's first priority.

4.07 REFERRAL, INTAKE AND ASSESSMENT.

- (a) **Referral.** A guardianship program shall develop a procedure for accepting referrals and shall disseminate that information to local courts, hospitals, adult protective services, nursing facilities and other potential referral sources. Referral procedures shall be designed to avoid situations in which the guardianship program will be referring clients to itself.
- (b) **Intake.** A guardianship program shall develop eligibility guidelines for the clients to whom services may be provided by the guardianship program. A guardianship program shall not accept any guardianship appointment or make any agreement to provide less restrictive alternative services that the guardianship program cannot handle or provide in a competent manner. Intake procedures shall be designed to collect sufficient information to determine the least restrictive alternative available to the client and to proceed with the appropriate services as soon as possible. If the guardianship program is unable to provide immediate services, the intake procedures should prioritize the client's place on a waiting list in accordance with Section 1.16 of these standards.
- (c) **Assessment.** As soon as possible after receiving a referral, a guardianship program shall make an assessment of a client to determine the following:
 - (1) whether there exists any immediate risk of abuse, neglect or exploitation to the client;
 - (2) how the client's incapacity, if any, affects the client's ability to make reasonably prudent decisions;
 - (3) what limitation of the client's rights would be in the client's best interests;
 - (4) what powers a guardian would need to protect the best interests of the client; and
 - (5) what tasks need to be included in the care plan for the client.

4.08 PRIORITIZATION OF POTENTIAL CLIENTS ON WAITING LISTS.

A guardianship program should make every effort to provide a guardian or to provide less restrictive alternative services for a potential client as soon as possible. If a potential client cannot be served at the time such services are needed, a guardianship program shall consider the degree of risk to a potential client's health, safety and resources in determining the potential client's priority on a waiting list. Any assessment of such potential clients shall include an assessment of the risk to the client of delaying such services. A guardianship program shall also maintain a policy that will insure that persons on waiting lists are reassessed at frequent intervals in order to reprioritize cases with changed circumstances as needed.

4.09 RESPONSIBILITY FOR BURIAL OR CREMATION.

A guardianship program should consider plans for burial or cremation for its guardianship clients, and, whenever possible, should consult such clients concerning the client's wishes with regard to this matter. Whenever possible, a guardianship program should make burial or

APPENDIX J - Proposed Model Standards for Guardianship Programs in Texas

cremation arrangements in advance of need. A guardianship program should develop a procedure for contacting local charitable or public burial or cremation resources for those guardianship clients without assets to make these arrangements.

4.10 EVALUATION AND MONITORING OF CASELOADS

A guardianship program shall maintain procedures to monitor and evaluate its guardianship and less restrictive alternative services caseloads to insure that all its clients are receiving quality services. These procedures shall include periodic interaction between supervisory staff and guardians, record keeping requirements, random audits of individual case records, interviews with clients and service providers, and other appropriate measures.

4.11 PERSONAL CARE PLANS FOR GUARDIANSHIP CLIENTS.

After a guardianship program or one of its members is appointed as a guardian of the person, the guardianship program shall develop a care plan to address the client's personal needs.

- (a) **Guardian of the Person Care Plans.** The care plan should address the powers, duties and responsibilities given to the guardian of the person by the Court's order appointing guardian. If the Court's order states that the guardian of the person has full authority, the care plan should address the powers, duties and responsibilities given to the guardian of the person by Section 767 and other applicable sections of the Texas Probate Code. The care plan may also include the following:

 - (1) monitoring services being provided to the client;
 - (2) providing appropriate clothing for the client;
 - (3) arranging for medical care, dental care, psychiatric care and rehabilitation services as necessary;
 - (4) arranging for education and/or employment opportunities when appropriate;
 - (5) monitoring the nutrition of the client;
 - (6) securing safe and secure housing; and
 - (7) obtaining needed public benefits if there is no guardian of the estate or other person charged with securing those benefits.
- (b) **Health Care Decisions.** A guardianship program shall develop a policy that generally describes the types of decisions that can be made by the guardian independently, the types of decisions that should be made only upon the advise of two doctors, the types of decisions that should be made only with peer review, and the types of decisions that should be made only after obtaining an order from the Court.
- (c) **Personal Visits.** A guardianship program shall establish a policy concerning the frequency of personal visits upon guardianship clients by the guardian or a representative of the guardian. These periodic visits should include personal interaction with the client, if possible, monitoring for signs of abuse or neglect, and if applicable, checking facility charts and consulting with facility staff or other caregivers.
- (d) **Client Files.** A guardianship program shall maintain a file on each client that includes intake information, a current copy of the personal and/or financial care plan, a copy of any Court orders or Letters of Guardianship, and a case notes concerning client activities and concerns.

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- (e) **End of Life Decisions.** A guardianship program shall include in its care plan whether the client has a DNR or Directive to Physicians or whether the client has ever expressed a preference regarding the use of extraordinary life sustaining measures. A guardianship program shall consult with legal counsel and the Judges of courts with guardianship jurisdiction in its service area to develop a policy regarding end of life decisions. This policy should be communicated to all employees and volunteers of the guardianship program.

4.12 FINANCIAL CARE PLANS FOR GUARDIANSHIP CLIENTS.

After a guardianship program or one of its members is appointed as a guardian of the estate, the guardianship program shall develop a care plan to address the client's financial needs.

- (a) **Guardian of the Estate Care Plans.** The care plan should address the powers, duties and responsibilities given to the guardian of the estate by the Court's order appointing guardian. If the Court's order states that the guardian of the person has full authority, the care plan should address the powers, duties and responsibilities given to the guardian of the estate by Section 768 and other applicable sections of the Texas Probate Code. The care plan may also include the following:
 - (1) Applying for a monthly allowance for the clients ongoing financial needs;
 - (2) Filing an inventory, appraisal and list of claims as required by the Texas Probate Code;
 - (3) Changing existing bank accounts to reflect the guardianship or creating new bank accounts in the name of the guardian on behalf of the client;
 - (4) Developing a long-term financial plan to manage the clients assets to provide for the best care for the client during the client's projected lifetime.
- (b) **Testamentary Documents.** The care plan should state whether the client has a will or other testamentary document, and the guardianship program should attempt to locate any such instruments and deposit them with the court for safekeeping, if possible.

APPENDIX K - Proposed Ethics for Guardianship Programs in Texas

A MODEL CODE OF ETHICS FOR GUARDIANS

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Rule 1 - Decision-Making: General Principles

A guardian shall exercise care and diligence when making decisions on behalf of a ward. All decisions shall be made in a manner which protects the civil rights and liberties of the ward and maximizes independence and self-reliance.

- 1.1 The guardian shall make all reasonable efforts to ascertain preferences of the ward, both past and current, regarding all decisions which the guardian is empowered to make.
- 1.2 The guardians shall make decisions in accordance with ascertainable preferences of ward, past or current, in all instances except those in which a guardian is reasonably certain that substantial harm will result from such a decision.
- 1.3 When the preferences of the ward cannot be ascertained, a guardian is responsible for making decisions which are in the best interests of the ward.
- 1.4 The guardian shall be cognizant of his or her own limitations of knowledge, shall carefully consider views and opinions of those involved in the treatment and care of ward, and shall also seek independent opinions when necessary.
- 1.5 The guardian must recognize that his or her decisions are open to scrutiny of other interested parties and, consequently, to criticism and challenge. Nonetheless, the guardian alone is ultimately responsible for the decisions made on behalf of the ward.
- 1.6 A guardian shall refrain from decisions making in areas outside the scope of the guardianship order and, when necessary, assist the ward by ensuring such decisions are made in an autonomous fashion.

Rule 2 - Relationship Between Guardian and Ward:

The guardian shall exhibit the highest degree of trust, loyalty and fidelity in relation to the ward.

- 2.1 The guardian shall protect personal and pecuniary interests of the ward and foster the ward's growth, independence and self-reliance to the maximum degree.
- 2.2 The guardian shall scrupulously avoid conflict of interest and self-dealing in relations with ward.
- 2.3 The guardian shall vigorously protect rights of the ward against infringement by third parties.
- 2.4 The guardian shall, whenever possible, provide all pertinent information to the ward unless the guardian is reasonably certain that substantial harm will result from providing such information. provide all relevant information to W unless substantial harm will result.

Rule 3 - Placement Decisions

The Guardian shall assume legal custody of the ward and shall ensure that the ward resides in the least restrictive environment available.

- 3.1 The guardian shall be informed and aware of the options and alternatives available for establishing the ward's place of abode;
- 3.2 The guardian shall make decisions in conformity with the preferences of the ward in establishing the ward's place of abode unless the guardian is reasonably certain that such a decision will result in substantial harm;

APPENDIX K - Proposed Ethics for Guardianship Programs in Texas

- 3.3 When the preferences of the ward cannot be ascertained or where they will result in substantial harm, the guardian shall make decisions with respect to the ward's place of abode which are in conformity with the best interests of the ward.
- 3.4 The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm. The guardian shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- 3.5 The guardian shall seek professional evaluations and assessments wherever necessary to determine whether the current or proposed placement of the ward represents the least restrictive environment available to the ward. The guardian shall work cooperatively with community based organizations which may be available to assist in ensuring that the ward resides in a non-institutional environment.
- 3.6 The guardian shall have a strong preference against placement of the ward in an institution or other setting which provides only custodial care;
- 3.7 The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous for the ward.
- 3.8 In the event that the only available placement is not the most appropriate and least restrictive, the guardian shall advocate for the ward's rights and negotiate a more desirable placement with a minimum of delay, retaining legal counsel to assist if necessary.

Rule 4 - Custody of the Person: Consent to Care, Treatment and Services.

The guardian shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure that such care, treatment and services represent the least restrictive form of intervention available.

- 4.1 The guardian shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the guardian is reasonably certain that such decisions will result in substantial harm to the ward.
- 4.2 When the preferences of the ward cannot be ascertained or will result in substantial harm, the guardian shall make decisions with respect to care, treatment and services which are in conformity with the best interests of the ward.
- 4.3 In the event the only available treatment, care or services is not the most appropriate and least restrictive, the guardian shall advocate for the ward's right to a more desirable form of treatment, care and services, retaining legal counsel to assist if necessary.
- 4.4 The guardian shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment or services represent the least restrictive form of intervention available.
- 4.5 The guardian shall work cooperatively with individuals and organizations which may be available to assist in ensuring the ward receives care, treatment and services which represent the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.
- 4.6 The guardian shall not consent to sterilization, electro-convulsive therapy, experimental treatment or service without seeking review by the court, the ward's attorney or other representative;
- 4.7 The guardian shall be familiar with the law of the state regarding withholding and withdrawal of life sustaining treatment.

APPENDIX K - Proposed Ethics for Guardianship Programs in Texas

- 4.8 The guardian shall monitor the care, treatment and services the ward is receiving to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous to the ward.

Rule 5 - Estate Management

The guardian of estate shall provide competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise intelligence, prudence and diligence and avoid any self-interest.

- 5.1 Upon appointment, the guardian shall take steps to inform himself or herself of the statutory requirements for managing a ward's estate.
- 5.2 The guardian shall manage the income of the estate with the primary goal of providing for needs of the ward, and in certain cases, the needs of the ward's dependents for support and maintenance.
- 5.3 The guardian has the duty to exercise prudence in the investment of surplus funds of the estate.
- 5.4 Where the liquid estate of the ward is sufficient, the guardian *with the court's permission* may make gifts as are consistent with the wishes or past behavior of the ward, bearing in mind both the foreseeable requirements of the ward and the tax advantages of such gifts.
- 5.5 There shall be no self-interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest.

Rule 6 - Termination and Limitation of Guardianship

The guardian has an affirmative obligation to seek termination or limitation of the guardianship whenever indicated.

- 6.1 The guardian shall diligently seek out information which will provide a basis for termination or limitation of the guardianship.
- 6.2 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall promptly request court action, retaining legal counsel if necessary.
- 6.3 The guardian shall assist the ward in terminating or limiting the guardianship and arrange for independent representation for the ward whenever necessary.

**COURT INITIATED GUARDIANSHIP POLICY
PURSUANT TO
SECTION 683 OF THE TEXAS PROBATE CODE**

Section 683 of the Texas Probate Code provides:

"If a court has **probable cause** to believe that a person **domiciled or found in the county** in which the court is located is an **incapacitated person**, and the person **does not have a guardian in this state**, the court shall appoint a **guardian ad litem** or court investigator to **investigate** and **file an application for the appointment of a guardian** of the person or estate, or both, of the person believed to be incapacitated."

This Court has implemented the following procedure to comply with this statute:

1. **INFORMATION LETTER.** The Court must receive a **fully completed** information letter on the attached form from a concerned party such as Adult Protective Services, a hospital, a nursing home, or a relative or friend of the proposed incapacitated person. The information letter should be sent to the Court at the address listed on the top of the letter.
2. **DOCTOR'S LETTER.** The Court must also receive a letter on the attached doctor's letterform, which must be signed by a physician (M.D. or D.O.) licensed to practice medicine in Texas. The letter must be dated within 3 months of the information letter and based upon an examination conducted within 3 months of the information letter.
3. **APPOINTMENT OF GUARDIAN AD LITEM.** Once the Court receives these letters and is satisfied that probable cause exists, the Court will appoint a guardian ad litem. The guardian ad litem is an attorney who will investigate the allegations made in the information and doctor's letters. If the guardian ad litem believes a guardianship would be in the best interests of the proposed incapacitated person, the guardian ad litem will file an application for the appointment of a guardian of the person and estate, or both, of the proposed incapacitated person. The Court may also appoint a Court Visitor to visit the proposed incapacitated person and to complete a report to assist the Guardian ad litem in this investigation.
4. **DUTIES OF COURT VISITOR.** If a Court Visitor is appointed, the Court Visitor will personally interview the proposed ward and will interview the party who filed the information letter concerning the proposed ward. The Court Visitor will also interview the known relatives of proposed ward. The Court Visitor will then file a report with the Court (and send a copy to the Guardian ad Litem) on the Court's form which states whether the proposed ward is incapacitated and who is the most suitable person to serve as guardian. If a Court Visitor is not appointed, the Guardian ad Litem will assume these duties but will not be required to file a Court Visitor Report.

APPENDIX L

5. **DUTIES OF GUARDIAN AD LITEM.** The guardian ad litem has the following duties in addition to those, which he/she may have if a Court Visitor is not appointed:
- a. consider less restrictive alternatives to guardianship;
 - b. consider the necessity of a temporary guardianship;
 - c. File application for guardianship, if necessary;
 - d. File a report with Court if no application is filed;
 - e. Locate family member or friend to serve as guardian;
 - f. Notify family members as required by TPC 633;
 - g. Ensure that proposed ward is properly served by Sheriff with citation;
 - h. Contact Court to set date for hearing on the application;
 - i. Prepare Order Appointing Guardian, Oath & Bond;
 - j. Attend hearing on application; and
 - k. Assist the guardian in obtaining bond and letters of guardianship, if guardianship is granted.
6. **UPON FILING OF APPLICATION.** If the Guardian ad Litem files an application for temporary or permanent guardianship, the Court will appoint an Attorney ad Litem to represent and **advocate on behalf of the proposed ward** pursuant to TPC 646. The proposed ward will then be served with citation and given a copy of the application by the Sheriff.
7. **DUTIES OF ATTORNEY AD LITEM.** The duties of the attorney ad litem are as follows:
- a. Review the application for guardianship, certificates of physical, medical and intellectual examination, and all of proposed ward's relevant medical, psychological and intellectual testing record;
 - b. Personally interview proposed ward;
 - c. Discuss with proposed ward the laws and facts of the case, the proposed ward's legal options regarding disposition of the case and the grounds on which guardianship is sought;
 - d. Ascertain whether proposed ward wants to oppose the guardian or the guardianship (if proposed ward is not able to communicate, AAL is to act in the proposed ward's best interests);
 - e. File an answer and a report that states whether proposed ward objects to the guardianship, proposed guardian, or both;
 - f. Visit with the Guardian ad Litem concerning the application; and
 - g. Advocate on the proposed ward's behalf at the hearing on the application.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS POLICY, PLEASE CONTACT:

AT PHONE NO.:

COURT INITIATED GUARDIANSHIP TAKES AT LEAST SIX WEEKS FROM THE DATE THE COURT RECEIVES BOTH LETTERS

APPENDIX L

COURT INITIATED GUARDIANSHIP INFORMATION LETTER

Today's Date: _____

Judge _____

_____, TX _____

Dear Judge:

I request the Court to investigate the need for guardian to be appointed for the following person:

Name:

Home Address:

Phone:

Social Security No.:

Date of Birth:

This person is: _____ living in a private residence at the address listed above
_____ living in a health care facility at the address listed above
_____ a patient in the following hospital: _____
Address: _____

This person is: _____ my friend or relative, my relation is: _____
_____ my client, my title is: _____
my employer is: _____

This person has the following relatives and friends: (Please list names, addresses and phone numbers of all known relatives and friends including spouse, children, parents, siblings and next of kin, and put an asterisk by person who wants to be appointed as guardian and list his/her SS# and date of birth)

1. relation: _____ 4. relation: _____
address: _____ address: _____

phone: _____ phone: _____

2. relation: _____ 5. relation: _____
address: _____ address: _____

phone: _____ phone: _____
3. relation: _____ 6. relation: _____
address: _____ address: _____

APPENDIX L

Circle the positive or negative response for each of the questions below:
This person **does/does not** have a guardian in Texas.

This person **is/is not** a resident of this County.

This person **has/has not** executed a **power of attorney** to the following person:

Name:

Address:

Phone:

The **nature and degree of the person's incapacity** is as follows:

I am aware of the following facts that indicate that this person needs a guardian:

This person has the following **assets and income**:

Real estate:

Value:

Bank accounts:

Value:

Other assets:

Value:

Monthly income:

Sources:

Is this person in **imminent danger** of serious impairment to his/her **physical health or safety** unless immediate action is taken? **Yes/No** If yes, explain:

Is this person in **imminent danger** of having his/her **estate seriously damaged** or dissipated unless immediate action is taken? **Yes/No** If yes, explain:

I hereby swear under penalty of perjury that this information is true and correct to the best of my knowledge.

Sincerely yours,

(signature)

Printed name:

Address:

Phone:

Form Doctor's Letter for Guardianship

Date: _____
Physician's Name: _____
Address: _____
Phone: _____

Judge _____

_____, TX _____

Re: In the Matter of the Guardianship of _____,
a proposed incapacitated person.

Dear Judge:

I am a physician currently licensed in the State of Texas. I have been the doctor for _____ ("Proposed Ward") since _____.

I last examined the Proposed ward on the following date: _____.

Based upon that examination and my observations, it is my opinion that the Proposed Ward is an **"incapacitated person"** because he/she (check the following items that apply):

- suffers from a physical condition;
- suffers from a mental condition;
- is substantially unable to provide food, clothing or shelter for himself/herself;
- is substantially unable to care for his/her own physical health; or
- is substantially unable to manage his/her own financial affairs.

If I have checked this item, it is because I believe that the Proposed Ward is not an "incapacitated person" and that none of the items listed above apply.

The extent of the Proposed Ward's incapacity is described in my answers to the following questions:

1. What is the general **nature and degree of the incapacity?**

APPENDIX L

11. It is my opinion that the Proposed Ward is **incapable** of personally handling or making decisions concerning the following matters which are **marked NO** below and that the Proposed Ward is **capable** of personally handling or making decisions concerning the following matters that are **marked YES** below:

- a. to handle a bank account; if YES, any limits on amount in account? _____
- b. to contract and incur obligations.
- c. to collect and file suits to collect on claims due to Proposed Ward.
- d. to pay, compromise and defend claims made against Proposed Ward.
- e. to apply for governmental services.
- f. to apply for and receive benefits from governmental sources.
- g. to enroll in public or private residential care facilities.
- h. to hire employees such as nurses.
- i. to apply for psychological and psychiatric tests and evaluations.
- j. to consent to future disclosure of psychological and medical records.
- k. to consent to future medical and dental treatment and testing.
- l. to accept employment opportunities.
- m. to execute a Will or Power of Attorney.
- n. to make gifts of real or personal property.
- o. other: describe: _____

12. THEREFORE, it is my opinion that the Proposed Ward is incapacitated as stated in this letter and that a guardian should be appointed and granted the powers necessary to act on the Proposed Ward's behalf and to make decisions for the Proposed Ward concerning the matters which are marked NO in item 11 above (**cross out paragraph if Proposed Ward is not incapacitated in your opinion**).

FUTHERMORE, (answer **YES** to one of the following):

by responding **NO** to all the items listed above, it is my opinion that the Proposed Ward is **TOTALLY INCAPACITATED**.

by responding both **YES and NO** to the items listed above, it is my opinion that the Proposed Ward is **PARTIALLY INCAPACITATED**.

13. Please include any additional information about the Proposed Ward that might assist the Court in making its determination (**attach additional pages if necessary**).

Sincerely yours,

(Doctor's signature)

**1998 GUARDIANSHIP TRANSITION PLAN FOR YEARS 2000 – 2005,
Included in 1998 Guardianship Advisory Board Annual Report
Updated December 2000
2000 Information in Bold**

1. Purpose: The Guardianship Alliance at HHSC, the Board, and the Texas Department of Protective and Regulatory Services (PRS) propose to work together to (1) determine the most efficient state structure to administer public guardianship services to persons who are incapacitated; and (2) transition from a system that relies upon PRS to provide guardianship as a last resort and that is funded almost entirely by general revenue, to a system that primarily meets public guardianship needs through local programs that receive some state funds.

2. Need for Guardianship

- There are approximately **49,000** ongoing guardianship cases in the state.
- More than **4000** cases were filed with the Texas courts in **1999**.
- In approximately **900** applications for guardianship in **1999**, there was not a suitable family member to serve as guardian.
- It is estimated that there are at least an additional **45,000** incapacitated adults (**this number may be much higher**) for whom there is no one interested enough to file an application for guardianship, or for whom there are no family or individual resources to initiate these proceedings.
- Of these 45,000 Texans, it is estimated that **2,655** of these individuals do not have family members or friends suitable to serve as guardians. Courts currently monitor about 46,000 guardianships of which guardianship programs maintain 2721 wards, or 5.9%.
- With the growth of the Texas population over age 65, especially the population over age 85, these numbers are expected to increase dramatically in the first part of the 21st century.

3. Current Services

- Public guardianship, and guardianship alternative, services in Texas are currently provided through the state and through local programs to approximately **2721 individuals in 1999;**
- Adult Protective Services (APS) staff at the Texas Department of Protective and Regulatory Services is currently providing over **416** established guardianships. APS provides guardianship to incapacitated victims of abuse, neglect and exploitation; to children who age out of Children's Protective Services (CPS) conservatorship; and to incapacitated individuals for whom there is no other viable guardianship alternative.
- **Twenty one** local guardianship and money management programs employ **83.25** paid staff and **912** volunteers to provide guardianship services to **2270** incapacitated persons and money management services to **377** individuals in **78** counties.

4. Current Expenditures –2000

- Currently, the HHSC has **\$100,000** that has been appropriated annually to meet its mandates on guardianship.

- Overall, the 2000 budgets for local guardianship and money management programs totaled \$3,470,663. This amount includes funds from county treasuries, APS contracts, and from foundations and other sources.
- **In 2000, the PRS budget for guardianships totaled \$2,188,617 for both its direct delivery guardianships services and contracts with local programs for guardianship services.**

5. Funds Requested 2000-2001

- As an exceptional item in the agency appropriations request, PRS has requested and received funding for the for the 2000-2001 biennium to maintain existing guardianship responsibilities and to expand to new cases (about 500 total cases).
- In the agency appropriations request, HHSC requested about \$135,000 annually for guardianship in the 2000-2001 biennium to continue to develop and expand local programs.
- **Funds Requested for 2002-2003.**
In 2000, HHSC submitted as part of its budget request the Guardianship Advisory Board LAR seeking an additional \$615,000 appropriation to HHSC each year for a total of \$715,000 annually in grant funds for guardianship services in fiscal years 2002-2003 (total request for two years is \$1,430,000).

6. Transition (See ¶XI)

- ◆ A transition planning period is needed to affect the transition, over a six-year period, from state-funded guardianships provided through state employees to mainly local programs that utilize volunteers and professional staff. The transition period will provide the time to plan for and coordinate local and PRS guardianship services to provide better access to individuals in need, enhance availability of local guardianship programs, and minimize the need for and the cost of the APS guardianship program. This approach will provide a more systematic approach for guardianship services without creating another state bureaucracy. The transition plan would address the following six points.
 - a. The need to maintain the current momentum of the Guardianship Alliance in fostering the growth and expansion of local guardianship programs. A structural change at this point could slow down momentum due to the time and costs associated with reorganization. In addition, the current structure needs time to mature to see if it will work, and any changes in the statewide structure at this point may be premature and counterproductive.
 - b. The need to continue the current guardianship responsibilities of PRS as guardian of last resort, while local programs are established or expanded to serve additional areas of the state and additional populations.
 - c. The potential conflict of interest when APS serves as the guardian for an incapacitated person. Conflict of interest issues may arise when staff members that investigate abuse, neglect and exploitation are also appointed guardian and when staff members that are guardians mistreat APS wards. APS addresses conflict of interest issues through (1) specializing guardianship staff from investigations staff; (2) using the PRS internal investigations

- division to investigate alleged misconduct of staff; and (3) notifying the probate court of any alleged misconduct.
- d. Because of the potential conflict of interest issues, guardianship services should probably not be provided in any agency that provides other services to the same individuals. The National Guardianship Association's policy is as follows: "For the governmental agency or corporate entity that serves as guardian, the guardian should be a free-standing entity, have individual decision making ability and not be subject to undue influence from any part of the larger organization. This is especially important if the larger organization provides services, such as housing, legal, advocacy or direct services to the ward."
 - e. Some counties depend totally upon APS to supply guardians for their incapacitated residents who do not have suitable family members or friends to serve as guardians. Continued reliance upon the state for this service discourages the building of the local guardianship programs that are operated with local and private as well as state funds.
 - f. Local programs are funded through a variety of sources whereas state services are almost totally dependent upon state appropriations.
- ◆ Coordination and expansion of local guardianship programs through the efforts and advice of the Guardianship Advisory Board has resulted in the expansion or development of local programs. This momentum can continue so that local programs become available as an alternative to making incapacitated adults wards of the state. This effort through HHSC should be continued, and a transition plan developed to gradually focus state funding on local programs and to determine the appropriate state agency to administer the funds.
 - ◆ FY2000-2005 Transition: During this transition period from state to local responsibility for and provision of guardianship services, the Guardianship Advisory Board will examine and recommend to the 77th Texas Legislature a state administrative structure to fund and provide oversight for the local programs. For the initial transition period, the existing guardianship effort to increase local programs should continue through HHSC. HHSC, PRS and the Guardianship Advisory Board will plan for the gradual increase of local programs, and the growth of the PRS guardianship program will be minimized.

APPENDIX N - Definitions

DEFINITIONS

1. **AAA-local area agencies on aging**
2. **Attorney Ad Litem**- an attorney appointed by a Court to represent and advocate for an alleged incapacitated person after a guardianship application has been filed.
3. **County Court**-courts with original constitutional guardianship jurisdiction
4. **TDHS**- Texas Department of Human Services.
5. **Guardian Ad Litem**-a person appointed by a Court to represent the best interest of an alleged incapacitated person; may be an attorney, psychologist, physician, social worker.
6. **Guardianship**-a legal proceeding in which a guardian is appointed for an incapacitated person. The proceeding may occur in a County Court, a County Court at Law, a Probate Court, or in a District Court depending on the county.
7. **Guardianship Program**. A guardianship program is a plan or system developed and implemented by an individual or entity on a local, county or regional basis to provide guardianship services and less restrictive alternatives to guardianship services to an incapacitated person or other person who needs assistance in making decisions concerning the person's housing, medical and/or financial affairs.
8. **HHSC**-Texas Health and Human Services Commission.
9. **Incapacitated Person**-a minor; an adult who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's financial affairs; or an individual who must have a guardian appointed order to receive governmental benefits. affaies.sualoathese standards.
10. **MHMR**-Texas Department of Mental Health and Mental Retardation.
11. **Money Management - Less Restrictive Alternatives** to guardianship may include, but are not limited to, money management services, including bill payer and representative payee services, case management, and services provided pursuant to a financial or health care power of attorney. includes incapacitated persons and those persons receiving less restrictive alternative services from a guardianship program.
12. **Statutory Probate Courts**- Courts created by statute authorized to exercise original guardianship jurisdiction.
13. **TDOA**-Texas Department on Aging
14. **TDH**-Texas Department of Health.

Guardianship Alliance of Texas
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