

1999 HOUSE HUMAN SERVICES

HCR 3016

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3016

House Human Services Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 12.6
1	X		29.2 - 31.7
Committee Clerk Signature <i>Susann Lindsteigen</i>			

Minutes:

Rep. SCOT KELSH, District 11, testified this resolution is a companion bill to HB 1299, 1301, and 1302. I would like to stress the immediacy of the problem and urge you to study the problem to better understand the needs and solutions long-term while providing short-term solutions.

Sen. TOM FISCHER, District 46, testified he was concerned about the people of our state who are in need of a guardianship program. We don't have anything of substance in place to protect these most vulnerable citizens from the animals that would prey on them. I ask that you consider these people in your deliberations and support this resolution.

PAUL GRIFFIN, President, ND Guardianship Association, testified that we have a crisis where some of the most vulnerable citizens in the state are concerned. The bills ,HB1299, HB1301, and HB1302, serve to address some of the immediate problems. This is a study to be done in terms

of assessing the standards and monitoring of guardians so that as we address this we can make sure that those guardians are qualified to do the job and adequately monitored to ensure quality of service. Guardianship problems are national. The Guardianship Association brought to our annual conference Sally Balsch-Herman who is from Washington and works with the AARP. She dealt with the need for guardianship and the need to monitor the guardians. She has worked on standards with other groups. Aging Services brought Mary Quinn to ND. She serves with the San Francisco Court District and has provided input on standards and monitoring. The National Guardianship Association has developed a set of standards and a certification process for guardians.

BILL CHAUSSEE, Administrator, Guardian and Protective Services, Inc., testified (Testimony attached).

MEL WEBSTER, Attorney, Bismarck, testified I have been involved in approximately 400 guardianships serving as petitioning attorney or as guardian ad litem. We have an excellent guardianship statute in ND. There are problems that occur in regards to monitoring and qualifications of guardians. The statute provides for the appointment of individuals, nonprofit corporations. ND needs to look at what kind of monitoring, qualifications, need for training and assistance for the state population.

Rep. BLAIR THORESON asked do you know the number of incapacitated persons? MEL WEBSTER stated he didn't have the figures. The total number was identified in the study.

LINDA WRIGHT, Director of Aging Services Division, Department of Human Services, testified (Testimony attached).

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House Human Services Committee
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RODGER WETZEL testified that we have a good guardianship law. I have been involved with various task forces. There is no system in ND, its fragmented. In a hospital setting, we see guardians that have very little understanding what their responsibilities might be in terms of health care decision-making or financial implications such as nursing home placement. I encourage a positive vote in support of this bill.

NORM STUHMILLER, AARP, testified we are in support this resolution.

OPPOSITION - None

Hearing Closed.

Rep. WILLIAM DEVLIN moved DO PASS and place on CONSENT CALENDAR

Rep. BLAIR THORESON second the motion

Committee Discussion

VOICE VOTE ROLL CALL #2: 13 yeas, 0 nays, 2 absent

Motion carried.

Date: 1-25-99
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3016

House Human Services Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By William Devlin Seconded By Blair Thoreson

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman	X		Bruce A. Eckre	X	
Robin Weisz - Vice Chairwoman	X		Ralph Metcalf	X	
William R. Devlin	X		Carol A. Niemeier	X	
Pat Galvin			Wanda Rose	X	
Dale L. Henegar	X		Sally M. Sandvig	X	
Roxanne Jensen					
Amy N. Kliniske	X				
Chet Pollert	X				
Todd Porter	X				
Blair Thoreson	X				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Niemeier

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 1999 10:48 a.m.

Module No: HR-15-1107
Carrier: Niemeier
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3016: Human Services Committee (Rep. Price, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3016 was placed on the Tenth order on the calendar.

1999 SENATE HUMAN SERVICES

HCR 3016

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3016

Senate Human Services Committee

Conference Committee

Hearing Date MARCH 16, 1999

Tape Number	Side A	Side B	Meter #
1	X		1,183
1		X	145
Committee Clerk Signature <i>Barat Kolodziejchuk</i>			

Minutes:

The hearing was opened on HCR3016.

REPRESENTATIVE KELSH, sponsor, introduced the bill. ND does not have publicly funded program. (written testimony). SENATOR THANE: How broad is the term incapacitated? REP

KELSH: I define that as someone mentally incapacitated.

SENATOR TIM MATTERN, sponsor, supports bill.

PAUL GRIFFIN, President of Guardianship Association of ND, supports bill in written testimony. SENATOR THANE: What are the quality options? MR. GRIFFIN: The quality options are, if you find willingness to serve, are they trained, do they make good decisions.

SENATOR THANE: Do you see abuse of guardianship? MR. GRIFFIN: It is very rare, but not unheard of. It may be more widespread than we know. SENATOR KILZER: Does your association monitor guardians? MR. GRIFFIN: No, we do have an association with national

guardianship association who deal with licensure requirements. We are interested in establishing some regulations and rules.

MEL WEBSTER, attorney, supports bill in written testimony. SENATOR FISCHER: Do you believe abuses of guardianship in rural area of ND is of unknown quantity. MR. WEBSTER: It is an unknown quantity in both rural and urban area. SENATOR FISCHER: It is easier to bring it to life in rural settings, like the case in Cass County. MR. WEBSTER: Yes, I agree with that. The court relies on whistle blowers, an interested person but no relative.

JUDY VETTER, licensed social worker, supports bill, written testimony.

LINDA WRIGHT, Dept of Human Services, supports bill, written testimony. We would see this as a system wide approach. The study should look at all aspects of society; mentally ill, physically disabled, or elderly. whatever the case may be.

CONNIE HILDEBRAND, NDCSA, supports bill.

No neutral or opposition to the bill.

The hearing was closed.

SENATOR FISCHER moved a DO PASS and PLACED ON CONSENT CALENDAR.

SENATOR DEMERS seconded. No discussion. Roll call carried 6-0-0. SENATOR FISCHER will carry the bill.

Date: 3/16/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR

Senate HUMAN SERVICES COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Consent calendar

Motion Made By Sen Fischer Seconded By Sen DeMers

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total 6 (yes) 0 (no)

Absent 0

Floor Assignment Sen Fischer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 16, 1999 1:13 p.m.

Module No: SR-47-4881
Carrier: Fischer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3016: Human Services Committee (Sen. Thane, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3016 was placed on the Tenth order on the calendar.

1999 TESTIMONY

HCR 3016

House Human Services Committee
Testimony of William Chaussee, Administrator
Guardian and Protective Services, Inc.
in Support of House Bill No. 3016
January 25, 1999

Madam Chair and Members of the Committee:

My name is Bill Chaussee, the administrator of Guardian and Protective Services, Inc., located in Bismarck. I am a registered guardian through the National Guardianship Association and am guardian for approximately 85 individuals. I appear before you in support of House Bill No.3016.

There is a crucial need for qualified guardians to serve the growing number of elderly and mentally ill individuals in need of assistance in various areas of their lives. Often, however, family members and other well meaning individuals serve as guardian but have no training or experience to bring to this responsibility.

Appointment as guardian does not require any special training, experience, or education and even though a judge may require an annual report there is no mechanism to assure that the report is completed or for that matter even reviewed by the Court.

While this Bill is not a replacement for House Bill #1301, which provides funding for guardianship, qualifications, standards, and monitoring requirements need to be studied and implemented. We request your support for House Bill No. 3016.

House Human Services Committee
House Concurrent Resolution No. 3016
January 25, 1999

Madam Chairman and members of the House Human Services Committee. My name is Linda Wright, Director of the Aging Services Division, Department of Human Services. I appear before you today on behalf of the Department of Human Services in support of House Concurrent Resolution No. 3016.

As indicated in the content of the study resolution, there are many issues in regard to guardianship for incapacitated persons that merit study. We see this as a system wide issue, encompassing persons who are developmentally disabled, elderly, seriously mentally ill, or due to various conditions may be unable to continue to make decisions on their own behalf.

A study of the qualifications, standards, and the monitoring requirements for guardianship services can only result in quality services for the incapacitated person. In addition to the need to establish guardianships in appropriate cases, there is also the need to change or rescind guardianships when exploitation or abuse occurs, or the guardianship is no longer appropriate.

The Department of Human Services would assist in the study effort upon request. I would be happy to answer any questions you may have at this time.

Chairman Thane and members of the Senate Human Services Committee,

It's a pleasure to appear before your committee for the first time (this morning).

For the record, I am Scot Kelsh, Representative, District 11, south central Fargo.

I introduced HCR 3016 at the request of the Guardianship Association of North Dakota. This is the only surviving leg of what began as a four-legged stool to address some of the huge problems facing guardianship services in North Dakota today. The problems are growing and too numerous to ignore.

This resolution proposes to conduct an in-depth study of those problems and to offer legislation to remedy them. Because North Dakota is one of a handful of states that does not have a publicly funded guardianship service program, there is no accountability for guardians and the exploitation of the most vulnerable occurs in all regions of the state.

There are people here today to testify on behalf of this resolution. Again thank you for allowing me to testify in front of your committee today and I ask for your favorable consideration on this resolution.

**Senate Human Services Committee
House Concurrent Resolution No. 3016**

March 16, 1999

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The Department of Human Services would assist in the study effort upon request. I would be happy to answer any questions you may have at this time.

Senate Human Services Committee
Testimony of Judy Vetter, Program Director
Guardian and Protective Services, Inc.
in Support of HCR No. 3016
March 16, 1999

Chairman Thane and Members of the Committee.

My name is Judy Vetter, a licensed social worker and registered guardian with Guardian and Protective Services, Inc., located in Bismarck. I appear before you in support of HCR No.3016.

Guardian and Protective Services, Inc. (GaPS), a non profit corporation, was established in January 1997 to provide needed protective arrangements to vulnerable adults which includes guardianship services.

Our focus is to provide protective arrangements and/or guardianships to vulnerable adults who are unable to secure services through family members, agencies, or other interested parties and yet allow the individual to maintain as much independence as possible.

The cases that are referred to us are often severely mentally ill or elderly individuals with complex problems, making it difficult to find family or volunteers to assist with protective arrangements or guardianship.

Guardian and Protective Services, Inc.
HCR No. 3016

We provide services such as guardian and conservator, when needed, or less restrictive appointments, when appropriate, such as power of attorney for finances and/or healthcare or Social Security Payee.

Our agency receives referrals from the following sources: State human service centers, State Hospital, county social services, nursing agencies, hospitals, county senior centers, families, banks, concerned neighbors and friends, attorneys, judges and the court system.

The role of a guardian varies from case to case and the authority granted is determined through the court system.

In a guardianship hearing the authority granted by the presiding Judge is determined through reports from the Guardian Ad Litem, which is an attorney that represents the proposed ward, the Court Visitor, who is a Licensed Social Worker or Registered Nurse, a Physician report and testimony that is heard during the guardianship court hearing.

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The areas of authority in a guardianship are broken down into the following categories and are specific in stating whether the authority granted in each area will be full, limited or none.

- Place of residence
- Long - term care facility placement
- Vocation
- Legal matters
- Financial matters
- Education and training
- Medical treatment

In regards to the specific rights of an individual in the areas of : voting, changing marital status, obtaining or retaining a driver's license, and testifying in any judicial or administrative proceedings, the ward can not be deprived of these rights without specific findings by the court.

A guardian cannot provide consent for the following procedures without getting court consent:

- psychosurgery
- abortion
- sterilization
- experimental treatment

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The responsibilities of the guardian are determined by the authority granted through the court system and are specified in "The Findings of Fact and Order Appointing a Guardian."

The role of a guardian may range from simple decisions such as setting up in-home services to complex decisions such as residential changes due to health and/or safety concerns and medical decisions. These are areas that can be and often are very complex issues we as guardians face.

In lieu of funding for guardianship services we ask for your support to study the qualifications, standards and the monitoring requirements for guardians of incapacitated individuals. We request your support for HCR No. 3016



Judy Vetter, Program Director

Licensed Social Worker and Registered Guardian

Guardian and Protective Services, Inc.

**TESTIMONY OF MELVIN L. WEBSTER IN SUPPORT OF
HOUSE CONCURRENT RESOLUTION 3016
BEFORE THE SENATE HUMAN SERVICES COMMITTEE**

Chairman Thane, Committee Members:

I urge your support of House Concurrent Resolution 3016. I am an attorney in private practice in Bismarck. My practice includes guardianships and conservatorships. Since the early 1980s, the process by which an individual is determined to be incapacitated and in need of a guardian has been revised, reformed, and greatly improved. Very briefly, the process consists of the following:

1. Filing a petition with the district court in the county where the ward is present or lives.
2. The petitioning attorney nominates a court-appointed visitor, physician, and guardian ad litem (attorney) to represent the proposed ward.
3. The visitor, physician, and guardian ad litem submit reports to the court.
4. A hearing is held to determine:
 - a. Whether or not the individual is incapacitated and in need of a guardian.
 - b. Whether there are any alternative resource plans which could be used in lieu of a guardianship.
 - c. Who should serve as guardian and what authority the guardian should have.

The guardianship statute permits the court to require an annual report, but it does not mandate an annual report. However, most courts do require an annual report.

At present, the guardianship statute provides a priority list to determine who should be appointed, but there are few qualifications or standards or monitoring requirements for guardianships. Most courts rely upon an interested party to petition the court in the event any type of a problem arises. The difficulty is that frequently there are no family members or other parties who are able or willing to petition. In addition, even those wards who have family members do not have family members who reside within the state and there is almost no monitoring of guardianships that is done. The courts by and large rely upon petitions from interested parties to address any problems.

Therefore, I urge your support of House Concurrent Resolution 3016.

Senate Human Services Committee

Testimony on HCR 3016

Provided by: Paul T. Griffin, President
Guardianship Association of North Dakota
March 16, 1999

Chairman Thane and Committee Members:

Good morning!

My name is Paul Griffin, I supervise the Guardianship Division of Catholic Family Service, a position I have held for the past twelve years. I am also the current president of the Guardianship Association of North Dakota. It is in my capacity as the president of the Guardianship Association that I would like to take this opportunity to address your committee regarding HCR 3016. With your permission, I would like to give you a brief overview of our organizations activities and provide some historical background..... additional supportive testimony will be furnished to you in written form from other members of our group.

As you may or may not know, North Dakota is facing a growing crisis.....it is the crisis of the unmet guardianship needs of the most vulnerable of our citizens.

These unmet needs are well documented. Past surveys and studies including the most recent study (**A Comprehensive Study of Guardianship Services in North Dakota** prepared for the North Dakota Guardianship Coalition by *Kari Conrad & Associates* submitted July 1, 1996) have clearly and objectively identified the scope of the current problem and a pattern of circumstances and demographics that establish guardianship as an increasing concern now and for the foreseeable future. The ever increasing elderly population of our state, the economic factors and job pressures forcing families off the farms and out of the rural areas and communities and other circumstances have dramatically depleted the traditional "guardian pool." There are fewer and fewer family members

available and willing to assume the protective responsibilities of their parents, sibling and grandparents.

Advances in medical care and other innovations have extended life expectancy. The expansion of the services available to people with handicaps and disabilities have placed them in the mainstream of our society. These successes have created new concerns and problems that expose the very people whom they benefit to less positive possibilities....abuse, neglect, exploitation and the danger that they may not received needed medical and other services.

Requests for guardianship assistance are widespread and diverse....from nursing homes to county social service agencies, hospitals to group homes, states attorneys to Protection & Advocacy, Legal Assistance to pastors and ministers.

A nursing home administrator seeks a guardian to serve an elderly individuals who must have a critical decision made regarding code level and end of life questions.

A hospital social worker needs a guardian for a patient who requires major surgery but is not able to provide informed consent.

A county social service worker is trying to access needed services to maintain an at-risk individual in her own home but is not able to understand all the information she is being provided.

An advocate has serious concerns about a situation where an elderly person is being financially exploited by his relatives.

A county social service director has identified a case where a long time county resident can no longer care for herself and must be placed in a protective situation.

A mental health worker needs a guardian for a client with manic depression to provide structure and secure appropriate treatment.

These call for guardianship service are made on an almost daily basis, but the sad truth is that the guardianship services currently available to members of the adult population are limited, underfunded, suspect in terms of quality or simply non-existent. Efforts of public administrators, private guardianship services and corporate guardians cannot adequately fill the void.... and increasing numbers of elderly, mentally ill and developmentally disabled individuals are more frequently exposed to abuse, neglect and other dangers.

Over the past 12 years uncounted attempts have been made to focus attention to this problem and to mobilize an effective long-term response. There have been guardianship study groups, guardianship focus groups, guardianship task forces and individuals who have worked diligently to alert the public and elected officials to the problem.

These efforts have included the Department of Human Services, the current and previous state administrations, the legislature through specific committees and individuals members, county social service boards and directors, district court judges, states attorneys and others. There have been studies, surveys, meetings and media attention.

Funding has been pursued through numerous grant applications, solicitation of donations, expanded requests to community United Way campaigns, fund raising projects, constant emphasis on responsible fiscal management, exploration of alternative governmental support (Title XIX), review and research of options for funding utilized by other similar programs on a national basis, the use of subsidies and contributions from churches and religious organizations and many other approaches. Most recently, the Guardianship Association sponsored a number of bills during this legislative session that would have addressed these issues..... all of them have been defeated.

The “bottom line” is that every one agrees that there is a tremendous need.....there is an increasing number of vulnerable people in our state who need the protection of a guardian, but there are fewer and fewer (**QUALITY**) options and alternatives available to meet the need.

The Guardianship Association of North Dakota has grown-up and out of these efforts. It is a coalition of concerned citizens, human service agencies, service providers, private corporations and others who have jointed together to positively impact this area of service in our state. Many of our members are veterans of the efforts of the past 12+ years to try to bring services to the ‘neediest of the needy.’ GAND has worked cooperatively and positively with any and all entities to make quality guardianship services available to those who need them, especially those who currently cannot access or pay for them. HCR 3016 represent the evolution of our activities and the last surviving piece of legislation proposed by our association.

It is GAND’s belief that this concurrent resolution and the study that it would obtain is a feasible approach to keeping a constructive process going to attempt to deal with the critical guardianship problems our citizens face.

In closing I would like to express my appreciation to the members of this committee and the bill sponsors. In you role as legislators you have assumed some major responsibilities. Our Association’s efforts are intended to draw your attention to the problem and seek your assistance in its solution.

Be assured that our work is a coalition effort and we are ready to work with you to address this very serious and growing need. I urge your support of HCR 3016.

Respectfully Submitted:

Paul T. Griffin, President, Guardianship Association of North Dakota