



N.C. Department of Health
and Human Services

Public Guardianship

Oversight of County Departments of Social
Services and Guardianship Corporations
&

Public Guardianship Report

Public Guardianship Subcommittee

Joint Legislative Oversight Committee on Health and Human Services

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Dennis Streets

Director, Aging and Adult Services



Oversight of County Departments of Social Services (DSSs)

- Statewide Training
- On-Site Visits to DSSs/Case Consultation and Technical Assistance
- Program Compliance Monitoring
- Corrective Action Plans and Follow-Up
- Complaint Investigation and Resolution
- Bond Coverage for Guardians



Statewide Training

- **Guardianship Basic Skills Training**
 - Mandated for all disinterested public agent guardians per NCGS 35A-1216. Rule-making power of Secretary of Health and Human Services:
 - The Secretary of the Department of Health and Human Services shall adopt rules concerning the guardianship responsibilities of disinterested public agents. The rules shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians.
- **Guardianship Decision Making, An Ethical Perspective**
 - DHHS/DAAS sponsored and recommended two-day training that addresses daily guardianship responsibilities, including decision making for wards in the care of county DSSs.



On-Site Visits to County DSSs/Case Consultation and Technical Assistance

- Division of Aging and Adult Services (DAAS) field-based staff make regular site visits to all 100 DSSs to assure compliance with social services programs for older adults and adults with disabilities
- Provide consultation and technical assistance on guardianship cases
- Review guardianship cases during on-site visits
- Provide in-service guardianship training as needed
- Offer a list-serve for immediate help with questions
- County DSS attorneys consult with the NC Attorney General's Office on legal issues in individual cases



Program Compliance Monitoring for County DSSs

Conducted by DAAS field-based staff and intended to determine whether or not a guardianship program is operating in adherence with General Statutes, administrative rules, and program standards



Guardianship Program Compliance Monitoring Tool

- Record established for each ward
- DSS initiated petition, if applicable
- Court Documents
 - Legal authority to serve as Guardian
 - Status reports
 - Accounting reports
- Bond Coverage
- Service Provision



Corrective Action and Follow Up

DAAS field staff establish corrective action plans as needed based on monitoring results and scoring from monitoring tool and make on-site visits to follow up and assure that corrective action has been implemented.



Complaint Investigation and Resolution with a County DSS

- Any citizen-initiated concerns, including those passed through legislative (State and Congressional) and executive branches are investigated by DAAS field-based staff
- Interviews are conducted with DSS staff, family members, and others involved in the ward's care
- On-site visits are made as needed to ensure ward's needs are appropriately addressed



Addressing Patterns of Non-Compliance

Any patterns of non-compliance with law and policy are reviewed and addressed through performance improvement plans (outside of regular monitoring and any corrective action plans).



Bond Coverage for County DSSs

- NCGS 35A-1239-Health and Human Services Bond
 - The Secretary of the Department of Health and Human Services shall require or purchase individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all agents, the bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State.
- DAAS manages the Bond coverage on behalf of DHHS and conducts a reconciliation annually with the Insurance Company.



Shift in Responsibility for Guardianship

- Continued Reliance on County DSSs
- Use of Eligible Corporations



Oversight of Guardianship Corporations

- Contract Development and Renewal
- Training
- Consultation and Technical Assistance
- Program Compliance Monitoring
- Corrective Action Plans and Follow Up
- Complaint Investigation and Resolution
- Bond Coverage for Guardians



Contract Development and Renewal with Corporations

- **Established consistent contract requirements and rates across all contracts**
- **Contract Scope of Work (major provisions)**
 - Comply with all provisions of NCGS 35A, including 35A-1213(f) “conflict of interest” provisions
 - Attend Basic Guardianship training as required by NCGS 35A-1213(c)
 - Conduct face-to-face visit with wards at least every 90 days and have contact with the ward monthly
 - Maintain a guardianship record with assessments, medical and dental exams, and other records required by the Clerk of Superior Court
 - Notify DAAS of any APS reports on a ward as soon as corporation becomes aware of the report
 - Fill vacancies following contract provisions



Training for Corporations

- Guardianship Basic Skills Training
 - Mandated for all corporations per NCGS 35A-1213.
- **35A-1213. Qualifications of guardians**
 - (c) Corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. **A corporation contracting with a public agency to serve as guardian is required to attend guardianship training and provide verification of attendance to the contracting agency.**



Consultation and Technical Assistance for Corporations

- DAAS staff provide consultation and technical assistance as needed based on contract provisions
- DAAS keeps the corporations informed of any changes in regulations governing the guardianship program
- DAAS reviews monthly invoices from corporations and reconciles any discrepancies with the corporation



Program Compliance Monitoring for Corporations

Conducted by DAAS staff and intended to determine whether or not a guardianship corporation is operating in adherence with General Statutes and contract requirements.



Program Compliance Monitoring Tool for Corporations

- Record established for each ward
- Corporation initiated petition, if applicable
- Court Documents
 - Legal authority to serve as Guardian
 - Status reports
 - Accounting reports
- Bond Coverage
- Service Provision



Corrective Action and Follow Up

DAAS staff establish corrective action plans as needed based on monitoring results and scoring from monitoring tool and make site visits to corporations to follow up and assure that corrective action has been implemented.



Complaint Investigation and Resolution with a Corporation

- Any citizen initiated concerns to legislative (State and Congressional) and executive branches are investigated by DAAS staff
- Interviews are conducted with corporation staff, family members, and others involved in the ward's care
- Visits to corporations are made as needed to ensure ward's needs are appropriately addressed



Addressing Patterns of Non-Compliance

Any patterns of non-compliance with law and policy are reviewed and addressed through performance improvement plans (outside of regular monitoring and any corrective action plans).



Bond Coverage for Corporations

35A-1230. Bond required before receiving property.

- Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court, provided that if the guardian is a nonresident of this State and the value of the property received exceeds one thousand dollars (\$1,000) the surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized surety company, or secured by cash in an amount equal to the amount of the bond or by a mortgage executed under Chapter 109 of the General Statutes on real estate located in the county, the value of which, excluding all prior liens and encumbrances, shall be at least one and one-fourth times the amount of the bond; and further provided that the nonresident shall appoint a resident agent to accept service of process in all actions and proceedings with respect to the guardianship. The clerk shall not require a guardian of the person who is a resident of North Carolina to post a bond; the clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.
- Corporations are responsible for purchasing bond coverage



DHHS Public Guardianship Report

- Secretary Wos requested Division of Aging and Adult Services (DAAS) to convene work group to address guardianship services and make recommendations about the publicly funded system for guardianship by December 31, 2013
- Work group convened in July 2013 and met six times to develop recommendations and conducted three conference calls to review and refine recommendations
- Recommendations submitted to Secretary Wos in the report entitled *Public Guardianship Ad-Hoc Report*



Public Guardianship Work Group Members

- NC Association of County DSS Directors
- NC Guardianship Association
- NC Conference of Clerks of Superior Court
- UNC School of Government
- NC Administrative Office of the Courts
- Representatives of the Corporations
- NC Divisions of Aging and MH/DD/SAS



Work Group Findings/Observations

- NC's model of public guardianship which utilizes disinterested public agent guardians, i.e., county DSSs and private corporations is good public policy and serves people most in need of a legal surrogate decision maker.
- Private corporations fulfill a vital role in NC's system of public guardianship.
- People served by a publicly funded guardian have complex needs and will likely need a guardian for many years.



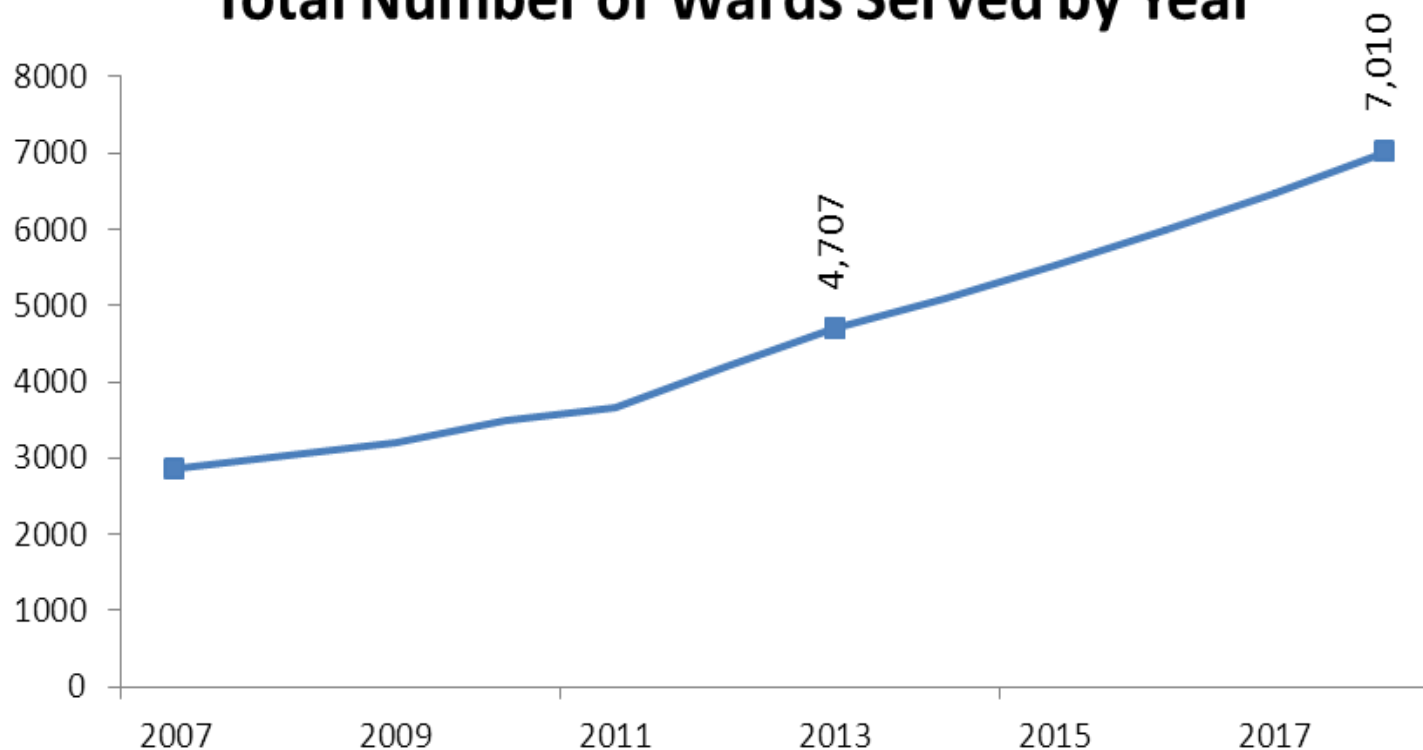
Work Group Findings, Continued

- Guardians generally, and public guardians specifically, experience difficulty accessing the array of services provided by LMEs/MCOs.
- The vast majority of NC's public guardianship service is supported by federal (SSBG) and county funds.
- The number of people needing a publicly funded guardian will continue to increase.



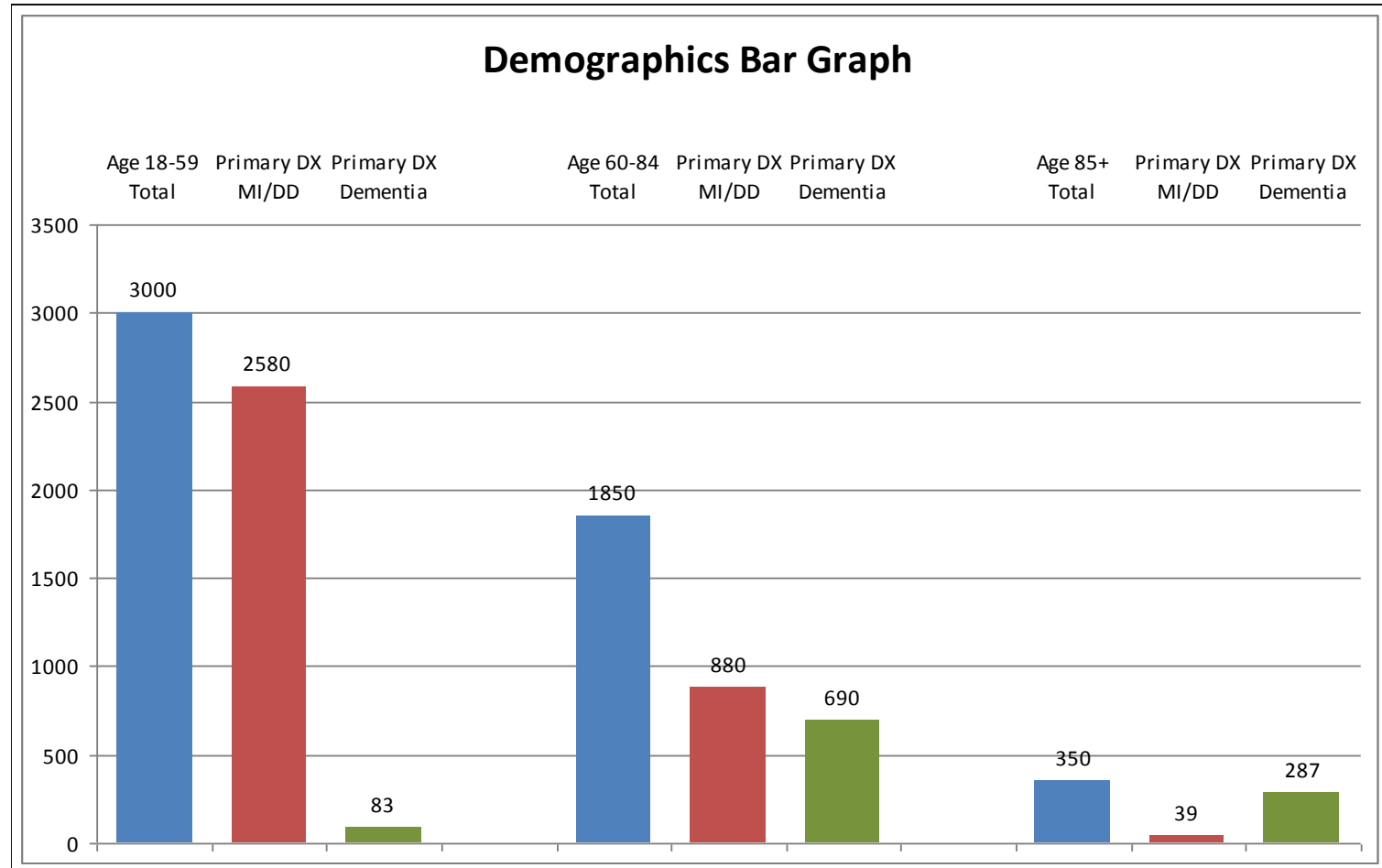
Expected Growth

Total Number of Wards Served by Year



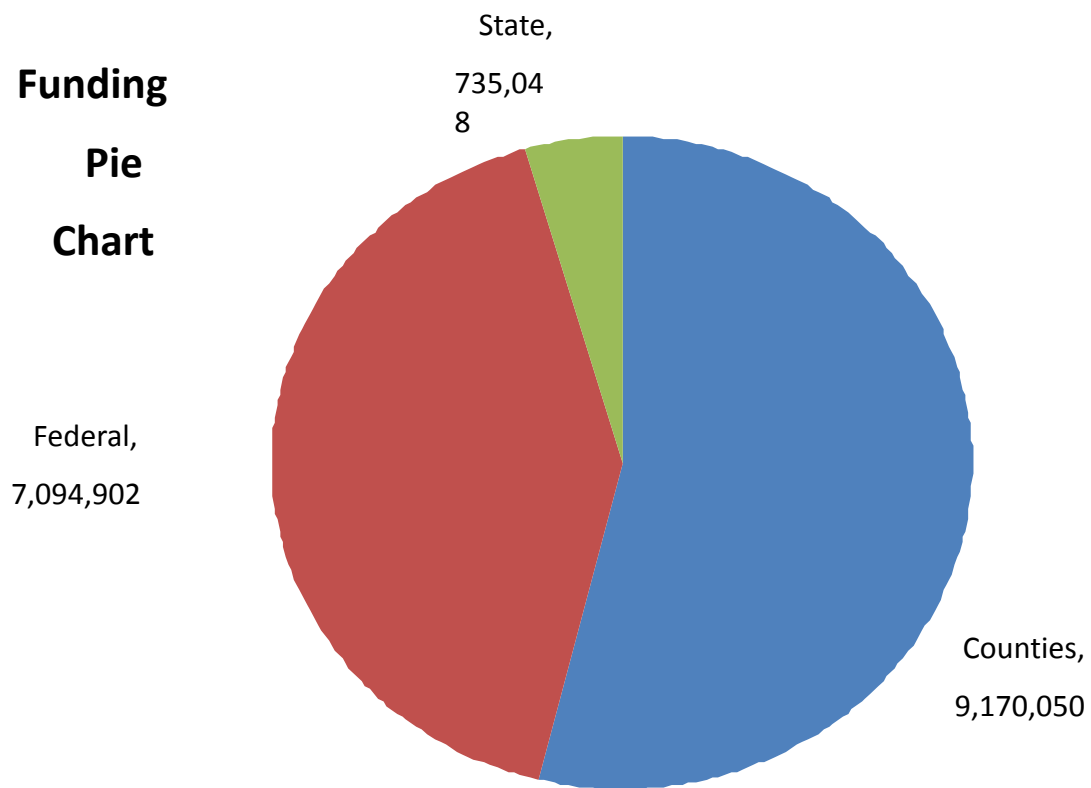


Face of NC Public Guardianship





**Funding
Pie
Chart**





Work Group Findings, Continued

- Current and future demands for publicly funded guardians cannot be met without additional resources, primarily in the form of funding
- A public guardian is appointed on average 30% of the time when a guardian is needed
- Pursuant to NCGS 35A, a guardian of the person is not entitled to receive a fee for his/her services and time spent carrying out his/her duties; can only receive reimbursement of reasonable expenses.



Work Group Findings, Continued

- DSS directors can experience a variety of conflicts of interest fulfilling their role as the sole public agency serving as guardian.
 - One example is when the DSS is guardian for an adult with a child(ren) in custody of the DSS



Work Group Recommendations

- Maintain NC's publicly funded guardianship model using county DSSs and corporations
- Provide adequate resources for the current and future needs of NC's public guardianship services:
 - Provide State funding of \$2.5 million to add 33 FTEs statewide to county DSSs to meet the 1 FTE to 22 wards caseload
 - Restore corporation funding to the original level of \$213/ward/month. Currently at \$189/ward/month due to reductions in State SSBG Spending Plan
 - Provide funding to expand capacity for existing corporations and increase the overall number of corporations



Recommendations, Continued

- Implement statewide, standardized procedures to ensure that a publicly funded guardian is appointed when there is no other appropriate individual to serve
 - use the Forsyth DSS model for pre-assessment to determine if others are available to serve
- Modify NCGS 35A-1202(14) and 1242 to require that efforts to restore competency, seek alternatives to guardianship, and recommend limited guardianship for wards be included in status reports submitted to Clerks



Recommendations, Continued

- Have the Division of Mental Health convene a work group to examine ways to improve access to the array of services provided by LMEs/MCOs to meet the needs of wards with serious mental illness, intellectual and developmental disabilities, and substance abuse



Recommendations, Continued

- Address conflict of interest in situations when the DSS director is serving as guardian for an adult who has child(ren) in DSS custody
- Study other areas to improve NC's publicly funded guardianship system, e.g.,
 - State laws governing medical decision making to ensure that guardians are appointed only when necessary
 - Current level of legal support for guardianship within county DSSs
 - Imposition of a fee for guardians of the person in addition to allowable reimbursement for expenses