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KRONKOSKY CHARITABLE FOUNDATION ROUNDTABLE DISCUSSIONS

TOPIC: Guardianship Roundtable
DATE: April 3, 2003
PREPARED BY: Cathy Story, University of Incarnate Word Intern

PARTICIPANTS

Invited Agency Representatives

Susan Bean	Bexar County Probate Court 2
David Blegan	Family Service Association
Mary Ellen Burns	United Way of San Antonio
Lamar Elliott	Jewish Family and Children's Services
Karen Hogan	Bexar County Probate Court 1
Judge Polly Jackson Spencer	Bexar County Probate Judge
Lisa Loya	PRS - Adult Protective Services
Mark Stanton Smith	Guardianship Advisory Board
Nancy Taguacta	Bexar County Housing and Human Services
Carol Zerential	Bexar Area Agency on Aging

Foundation Staff

Palmer Moe	Managing Director
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General Information

- The Texas Constitution has required counties to provide guardianship since the Civil War. This legal obligation is further enforced by the Americans with Disabilities Act.
- The way the law is written extends potential personal liability to the probate judges responsible for administering the guardianship program.
- Guardianship requirements are too legally difficult to put these into a community justice program.
- The average cost is \$2,000 per year per ward for cases maintained by nonprofit agencies. This cost averages \$4,000 to \$6,000 per year per ward for Adult Protective Services (APS) cases.
- There is no accurate count of total wards in San Antonio; some are old cases that pre-date the formal guardianship program established in 1993. An ongoing initiative at the courthouse is to try and find all of the wards.
- 250 guardianship requests are filed each year in Probate Court 1.
- Estimated that 6,000 to 8,000 guardianships currently exist in Bexar County, although no accurate count or record is available to verify the total number as this figure includes many cases that need to be closed. All wards should be visited monthly under the guardianship program.

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- The Bexar County Housing and Human Services receives requests for 300 visits per year as part of the legal follow-up requirements of the guardian program.
- There are already attorneys in Texas that are ready to file federal lawsuits against counties that are not providing adequate guardianship programs. Under the ADA, the attorneys that file a federal suit can also file for reimbursement of legal fees. If Bexar County is not going to be a target defendant, it needs to get better programs in place.

Guardianship Process

- Until the 1970's, there was not an entity that appointed guardians and so it was through a relationship with the individual that guardianships were formed. Of the 6,000 to 8,000 guardianships in Bexar County today, roughly 75% of the guardians are family members.
- In the private sector, a guardian gets appointed through various mechanisms: 1) Someone related to the individual hires a private lawyer to file the necessary paperwork. 2) A public agency, such as the Veteran's Administration, requests that a lawyer serve as a private guardian when no family member can be found.
- The majority of guardianships are person and estate. Most of these individuals have a house, some retirement income and/or receive government funding. In many cases, the agency works to enroll the individual in programs for which he or she may be eligible, such as Medicare. Services consist of visiting once a month to ensure that the rights and needs of the ward are being met.
- Temporary emergency guardianship can be established in 72 hours. If someone can be found who is qualified to assume guardianship, the ward will be released into his or her care; however, many become permanent wards of the agency assisting them.
- Approximately 35 to 45 days is required to create a standard guardianship. The cost is \$2,500 to file for private guardianship and \$1,000 per year to maintain.
- One of the largest problems is follow-up after establishment of guardianship. Only a handful of attorneys are familiar with the requirements under a guardianship. An annual report is required for every guardian. The guardian of a person only must file a report on the well being of the ward. The guardian of a person and an estate must file this report and a report accounting for the estate. The court spends considerable time following up with the reporting requirements.
- Prior to 1993, there was much less emphasis on reporting requirements for guardianship. A guardian must now be current with the annual filings to maintain court-approved status.
- An exemption option is available for annual filings, but the individual in the guardianship must have a very low income or a small estate.

Population Impacted

- A range of human problems exists with guardianship - from individuals with severe psychoses to those needing only money management assistance.
- If an individual has family or financial means, obtaining guardianship is not a problem. It is the other people such as the homeless under the bridge that need help. Most of these people could qualify for VA or other benefits, but need help accessing these benefits. Getting people off the street that are eligible to receive aid and providing a guardian to them would benefit the county tremendously. The county is already spending a considerable amount of money on these individuals through law enforcement and medical services. Accessing available aid through proper guardianship would improve the quality of life for these individuals without any net additional cost to society.

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- The city of Houston employs paid social workers to handle the homeless population. This population often includes individuals with problems that volunteers are not trained to handle. Chronically mentally ill homeless cases are very labor intensive.
- Many patients at the State Hospital could use guardianship when released. With no case management follow-up, they will be back to the Hospital in a short period of time.
- State/federal funding is expected to be cut for individuals that are currently not in treatment programs but receiving medications. Many of these individuals require medication in order to function.
- The courts often create short duration guardianships to provide care for individuals with short-term treatable illnesses.
- The “aging out” population is defined as low functioning Child Protective Services wards that become adults. This is a cluster of people that do not fall under Adult Protective Services but probably should. Most of these aging out young adults have parents but the parental relationship has been terminated. Aging out cases need help learning life skills - often are individuals with low IQ who have been placed with CPS for a reason. They are very vulnerable people who could often function in society with proper guidance.
- The agencies are seeing an increase in current aging out cases. Of the 52 wards on its’ caseloads, 15 are aging out cases. Adult Protective Services is looking to increase the services to this population.
- Aging out young adults are a small percentage of the problem. They are already in the system through CPS. The larger problem is the vast number of elderly in the pipeline. There are 225,000 persons in Texas currently with Alzheimer’s disease. This is projected to be 2,000,000 by 2020. Nobody appears to be planning for the future; the city needs a focused program to get out ahead of this to save money and eliminate human suffering.
- The demand for guardianship services is high. The percentage of the Bexar County population over 65 years of age is expected to increase from 10% to 20% over the next 20 years while at the same time children as a percentage of the population is anticipated to drop.

Current Programs

Agency Providers

- Adult Protective Services steps in for those adults who are incapacitated (unable to make a decision for themselves) and those who cannot pay the private fees. To initiate this process, one calls a 1-800 number and provides a medical letter stating that the individual is incapacitated. The agency then submits an application to the court and the agency is appointed to serve as guardian.
- The population served by Adult Protective Services includes the aging out plus persons 65 or older.
- Adult Protective Services primarily serves rural counties and contracts with other agencies for cases in Bexar County. Judges direct cases to Adult Protective Services as a last resort. This is expected to change when a rule currently under consideration is implemented.
- Family Service Association of San Antonio is contracted by Adult Protective Services. A threshold of 60 active APS referral cases has been established based upon the funding level. Family Service refers community referral cases to Jewish Family and Children's Services, although the capacity of this agency is limited as well by available funding.
- Family Service Association program serves the most dire of APS referrals in Bexar County. These are defined as wards in dire circumstances - mentally or physically fragile with either no relative willing to care for them or a relative that exploits, abuses and/or abandons them, and with limited income. Referrals to Family Service occur when no alternative guardian is available to meet the

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needs of the individuals.

- Family Service is required, if they qualify, to take aging out cases. Appropriate placement is often outside Bexar County; it then negotiates with APS to handle the case.
- Jewish Family and Children's Services have a waiting list of individuals needing guardianship. They rely primarily on volunteers and have had a difficult time retaining volunteers to fill the need for guardianship. Family Service Association cannot help eliminate this waiting list as its caseloads are at maximum capacity. As a result, its efforts are directed solely at guardianship and other services are not practical for it to consider.
- Jewish Family and Children's Services has five people working exclusively for the guardianship program. Family Service has three. Two and a half caseworkers are staffed through Family Service that do nothing but visit wards at their place of residence.
- Those served by Jewish Family and Children's Services primarily include individuals requiring guardianship for medical reasons. A family member is involved for the majority of the cases, and volunteers are placed as guardian for others. Levels are assigned to the cases. A level 4 indicates severe mental problems that require more trained care than a volunteer can handle. These cases are not handled by the agency.
- The free legal service offered by Jewish Family and Children's Services has been a tremendous service.
- ACOG currently has representation in every elderly care facility.
- Local programs that provide services needed by persons aging out (Alamo Solutions, Council on Independent Living, and Association for Retarded Citizens) do not have programs for guardianship. Different homeless organizations have begun to serve the aging out population and HUD is beginning to get involved with these programs.

Volunteer Providers

- It is very difficult to recruit and train volunteers. Often, if a person agrees to become a guardian, there is no way for them to be reimbursed. Additionally, the responsibility of guardianship to meet the rights and needs of the ward is significant. More money is likely being spent training volunteers due to turnover than would be spent hiring caseworkers.
- The Family Service program used to depend heavily upon volunteers, but increasingly people are expressing concern over personal liability.
- Volunteers are not used for monthly visits of the wards over whom Family Service is appointed guardian due to the contract with APS. United Way funds guardianship through Jewish Family and Children's Services that do not go through APS, and volunteers can be used on these community referral cases. Approximately 10 - 15 volunteers from Jewish Family and Children's Services handle an average of 1 - 2 cases per volunteer. Most people only want to volunteer if some form of reimbursement is available; yet, if income is available, the individuals are generally referred to a private source for guardianship.
- The Jewish Family and Children's Services solicits volunteers to serve as guardians for those cases that do not meet the level of need required for guardianship by the Family Service Association. This agency assists families by guiding them through the legal process of obtaining guardianship if they do not have the money for a private lawyer.
- A policy at the United Way mandates that they cannot replace publicly protected or funded programs nor can they supplement these programs with volunteers.

Funding Sources

- \$320,000 a year flows into the guardianship program from the following sources: \$135,000 federal

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and state via The Texas Department of Protective and Regulatory Services - Adult Protective Services; \$90,000 from Bexar County; \$50,000 from the United Way; and \$40 - \$50,000 from the Older Americans Act via the Bexar County Area Agency on Aging. The city encompasses 82% of Bexar County but is not currently providing any funding to guardianship programs. City of San Antonio (COSA), through the Community Initiatives Department, had at one time provided funds for guardianship programs but has not done so the past two years.

- Family Service and Jewish Family and Children's Services each work with specific client populations that do not overlap. The current level of funding is simply inadequate. Getting funding from the Commissioners Court is difficult; no money is currently allocated for treatment of the mentally ill. Resources in Bexar County are lower than other counties. There are several hundred cases waiting to be heard, and only 2 - 4 people in local government willing to actively address the problem.
- Bexar County's response to guardianship need has been inadequate with too little funding. Tackling the guardianship problem is a huge commitment, in terms of salaries required for staff, expenses associated with high turnover in staff and volunteers, and organizing volunteer efforts. In addition, procedural lapses and turnover have tarnished the reputations of the service providers. Two agencies received \$20,000 in the past from the State funding appropriated for this. Since then, the legislators have appropriated about \$500,000, but the agencies have not reapplied for any of this funding.
- When Jewish Family and Children's Services did not apply for county funding for two years, its future consideration for additional funds were hurt.
- ACOG provides funding to Jewish Family and Children's Services through a contract with them.
- ACOG has access to government funds that must be matched 25% in order to obtain the funding. If ACOG contractors (nonprofit agencies) solicit these funds from a nonprofit foundation, ACOG can still match these funds. If nonprofit contractors are successful in obtaining matched funds, the state dollars available through ACOG could be redirected elsewhere in the program.
- Family Service's focus has been on getting guardianships established. No follow-up legal services are available. Part of this restriction is due to the constraints of its contract with APS, which specifies that only the establishment of guardianships will be funded.
- Currently, United Way, Bexar County, and Bexar Area Agency on Aging are working on a joint Request-for-Proposal (RFP) to fund one entity to provide guardianship services. APS might also be a part of this joint RFP but has a different funding cycle so its status is still uncertain. If APS is unable to participate in the joint RFP, they will be issuing its own three-year contract for bids.

Future Direction

- What does the county need? To implement services such as the money management program that divert people away from the more expensive guardianship and reduce the need for associated legal services and monitoring (the money management program does not require reporting to the courts). Being mentally ill does not mean that you need to be under guardianship - many are not incapacitated when properly medicated. However, more paid case workers are needed to handle the cases that cannot be handled by volunteers – those individuals that are incapacitated even with medical treatment.
- Bexar County has two programs providing an array of guardianship services. The resulting perception is that these programs are duplicating overhead expenses and not maximizing use of funding. The guardianship problem is too big to address all populations at once. One individual suggested that what is needed is an agreement on a focused approach on a single aspect of guardianship. Once success has been reached with one population, a strong foundation will be set to

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move forward in other areas.

- One option to narrow the focus initially is to start with what is mandated - what does the law require that the county do?
- A task group including members of ACOG and the United Way put together a guardianship continuum that shows services starting with pre-guardianship (including money management programs) through post-creation of guardianship (including statutory visitation). A joint RFP has been drafted to get everything along the continuum under one agency for administration (put all the funding together) and thereby reduce duplication in overhead expenses. All money would go to a single organization with the ability to subcontract. The RFP is worded so that it cannot be awarded to a for-profit organization, although the ability to subcontract to a for-profit is allowed.
- Several years ago, the legislators debated over using a State agency to handle guardianship cases versus local agencies. A unanimous agreement was reached that using local agencies would be substantially less expensive and enable tailored methods to be employed to meet the needs of the unique local populations. Grants were originally issued to six counties to help fund this effort, which has since increased to fifty counties. From this initiative, six models have been created which counties can modify for use.
- Judicial support and subsequently county commissioner and state support, has in all cases has been a critical component for success. The probate judges are the only ones with enough credibility to elevate the inadequacy of guardianship services to the level of awareness that is required. One individual suggested that the solution may require that the two judges review the successful models that have already been implemented in the State and make a decision for the county as to which one to use. If pursued, this process is expected to take awhile to complete.
- A presumption exists in Bexar County that the guardian programs can be handled by volunteers, but that is not true. Volunteers fit in only some of the programs in the guardianship continuum of care. The cities of Austin and El Paso have implemented successful programs that largely depend upon volunteers.
- Volunteers can be best utilized in pre-guardianship programs such as money management and after the guardianship has been established with the agency to perform the required monthly visits.

Money Management Program

- Guardianship should be a measure of last resort and not first resort in the continuum of guardianship services. Resource and budget plans should be developed with this continuum in mind.
- Money management programs can prevent people from needing court ordered guardianship. These are individuals who only need help managing their money and paying bills. The State of Texas has a very good money management program model and volunteers are very effective for these services.
- In the rural counties, millions of dollars are being taken from older people. The money management program reduces the possibility of such crimes.
- San Antonio is the only metropolitan area in the State of Texas without a money management program. Two previous attempts have been made to implement this program in San Antonio but both did not work.
- An investigative study of the money management program has already been performed. The results indicated that, unequivocally, the program is needed in San Antonio to keep people from moving unnecessarily into guardianship programs. However, when the Organizations that provide guardianship services have limited resources, the Board of Directors do not have the ability to approve more money to pay for an agency member to organize volunteers to participate in the program.

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- The track record of the money management programs is very strong. AARP solicits volunteers from its members to provide the services, and provides bonds for these volunteers. The State offers training and materials for implementing the program at a cost of \$10,000. Generally, only a part-time person is needed to administer the program. Family ElderCare and AARP set up the money management program in Dallas with an \$8,700 grant.
- AARP just received more federal money for money management programs.
- The Austin contact for the Texas money management program is Barbara Ellis. She is very willing to help counties set up the program if resources are found (only a limited number of state issued grants remain to fund the startup of the program).
- The Alamo Area Council of Government puts about \$40K into guardianship per year. It is looking to focus this money on money management programs. Currently, it is working on a proposal to integrate money management and electronic banking to the people they serve. Those who assist individuals in managing their money would have electronic access to their wards' accounts so that they could administer these accounts more easily.
- If the groups involved in the guardianship program are not doing well or receiving positive feedback from its constituency, the legislators will not be interested in providing support. By focusing on a narrow area and establishing service that the existing groups can do well, confidence and support will increase.
- Money management does not address guardianship issues when medical decisions are required, but if the money management program does not divert resources away from tackling this larger problem, it can only help.
- Funding of a specific program (like the money management program) that can be implemented rapidly and successfully will be a positive step toward reducing the demand for guardianship services.