

## SJR 22 Study: Guardianship/Alzheimer's Disease

The 2015 Legislature passed Senate Joint Resolution 22, which requested an interim study of whether Montana's guardianship proceedings, programs, and services are adequate to meet the needs of elderly and developmentally disabled individuals who may be vulnerable to abuse, neglect, or exploitation.

The request for the study stemmed from concern over Montana's aging population. DPHHS estimates that by 2030, Montana will rank at least fifth in the nation in the percentage of residents over 65 years of age. National studies predict that a significant percentage of older Americans will suffer from mental illness, traumatic brain injuries, dementia, and other mental impairments that will diminish their ability to care for themselves or make decisions related to their health and well-being. Montana law allows for the appointment of guardians for individuals who are unable to understand, make, or communicate decisions about their care because of mental or physical impairments or chronic substance abuse. However, the resolution noted that no statewide training or standards exist for individuals appointed as guardians. It also said that the availability and quality of guardianship services and programs varies widely in different areas of the state.

In a poll to assess interest in potential interim studies, legislators ranked the SJR 22 study eighth out of 15 study resolutions, and the Legislative Council assigned the study to the Children, Families, Health, and Human Services Interim Committee. SJR 22 suggested that the committee review:

- Montana's existing guardianship statutes to determine if changes to the statutes could improve protections for elderly and disabled individuals;
- the guardianship services available to individuals through DPHHS;
- efforts at the local level to provide guardianship services;
- funding needs and availability for guardianship services, including an examination of existing and potential funding sources;
- efforts in other states to establish uniform, statewide guardianship programs or otherwise improve guardianship services; and
- recommendations of national groups that work on matters related to guardianship for vulnerable citizens.

At the beginning of the interim, members of the public encouraged the committee to expand the scope of the study to include the topic of Alzheimer's disease and other dementias. House Joint Resolution 30, which was introduced during the 2015 legislative session but was not acted on before the end of the session, had sought a study of whether changes to existing facilities and programs were needed to accommodate the needs of Montanans affected by Alzheimer's or

dementia. Recognizing the connection between the two studies, the committee decided to expand the SJR 22 study to include the topics outlined in HJR 30. That resolution suggested a review of:

- the number of individuals with dementia served by state-operated facilities, by privately operated facilities, and through the Medicaid home and community-based services waiver operated by the DPHHS Senior and Long-Term Care Division;
- the cost of providing services to individuals with dementia in state-operated facilities, privately operated facilities, and in the home;
- whether the available services meet the needs of individuals with dementia;
- whether services are available to allow individuals with dementia to remain in their homes and, if not, the barriers that exist to making those services available;
- the projected long-term needs for individuals with dementia and the types of facilities or services that may be needed to meet those needs;
- alternative approaches to providing the services that may improve the quality of care or provide care in a less restrictive environment; and
- any available information about the number of individuals with dementia who come into contact with local law enforcement agencies and the results of those interactions.

The committee also decided to review the supports and services for individuals with dementia and their families that are necessary to keep the individuals in their homes and communities.

### Guardianship Study Activities

The committee began the study in September 2015 by examining Montana's current guardianship laws for adults. Members also learned at that time about conservatorship laws, which may be used along with or in place of a guardianship to manage a person's estate, and about advance directives, which allow a person to plan ahead for incapacity by specifying the person's wishes and delegating decision-making if the person becomes incapacitated.

A guardianship is a legal relationship between an incapacitated person<sup>1</sup> and another person who is appointed by a court to make decisions on behalf of the incapacitated person concerning the person's care and well-being. Montana law spells out — in Title 72, chapter 5, part 3 — the process

---

<sup>1</sup> An incapacitated person means "any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impair the person's judgment that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment." 72-5-101(1), MCA.

for determining whether a person is in need of a guardian and also the powers and duties of guardians. In general, a guardianship must encourage maximum self-reliance and independence in the person and must be tailored to the extent of the person's actual mental and physical limitations.

Speakers in September said the state's district courts handled 1,124 guardianship cases in 2014. Most cases are filed by family members, physicians, the state's Adult Protective Services Bureau, or others who believe a guardian is needed to handle all or some of a person's affairs. Some individuals who are the subject of guardianship petitions are represented by public defenders. In fiscal year 2015, the Office of the State Public Defender handled 189 guardianship cases for individuals who did not have the money to hire their own attorneys.

The committee also learned that while some area agencies on aging and nonprofit groups provide guardianship services, those services are usually available on a limited basis and primarily for low-income individuals. Most programs serve 20 or fewer people per year. If a person is found to be in need of a guardian but doesn't have a family member, friend, or other interested person to serve in that role, DPHHS employees may be appointed as the person's guardian.

Throughout the study period, speakers emphasized that Montana has few statewide standards for guardians. In addition, they said the district courts provide relatively little oversight of guardians. The committee heard presentations about the standards of practice developed by the National Guardianship Association and about model legislation to protect vulnerable adults from financial abuse. They also studied so-called "WINGS" groups, or working interdisciplinary networks of guardianship stakeholders. Such groups have been created in some states to recommend standards for guardians and work on other guardianship topics.

### Alzheimer's Study Activities

The committee began its study of Alzheimer's disease in November 2015 with presentations on the prevalence, causes, stages, and treatments of the disease, as well as the experiences and concerns of family members who provide care for Alzheimer's patients. The committee also learned about the types of community-based services and facilities that provide care for individuals with Alzheimer's or other dementias. And they heard about the efforts of the Montana Alzheimer's/Dementia Work Group, which was in the midst of preparing an Alzheimer's state plan as the committee began its study.

Representatives of the work group presented the group's recommendations for committee consideration in March 2016. The group recommended that the state:

- have an employee whose sole role is to facilitate a coordinated approach to planning for and providing services to individuals with Alzheimer's disease or other dementias;
- increase community-based placement options for Alzheimer's or dementia patients by adding slots to the home and community-based services waiver and improving reimbursement rates for some services;

- support respite programs for caregivers; and
- support a proposal by the state's area agencies on aging for increased funding to assist individuals with Alzheimer's and their families.

### Narrowing the Focus

After hearing the work group's recommendations in March, the committee asked staff to work with the group to develop legislation for consideration at future meetings. At their May, June, and August meetings, committee members reviewed drafts, examined potential costs, and took public comment on Alzheimer's-related bill drafts to:

- provide grant funding for a nonprofit organization to coordinate Alzheimer's services;
- appropriate \$1.5 million to the 10 area agencies on aging in the next biennium for services targeted at Alzheimer's patients and their family members;
- create and fund a grant program for organizations to train people to serve as volunteer respite caregivers; and
- increase the number of basic and adult residential home and community-based services waiver slots and increase the reimbursement rates for assisted living and memory care.

For the guardianship portion of the study, the committee reviewed and took comment on bill drafts to:

- require financial advisers to report suspected financial abuse of vulnerable adults to the state securities commissioner;
- require guardians and conservators to report suspected financial abuse to DPHHS; and
- create a WINGS group that would work on guardianship and conservatorship standards, review other guardianship topics, and make recommendations for grants to support public guardianship programs. The bill would also fund the grant program.

The committee had also requested a bill draft in March to incorporate the National Guardianship Association standards into statute. But members agreed before the May meeting not to pursue that draft because of the scope of the statutory changes that would be needed. Members also made consideration of appropriate standards one of the duties of the WINGS group proposed in LCCF7b.

Final Recommendations

After weighing various versions of the bills and a range of potential costs for some of them, the committee approved introducing the following bills as committee bills in the 2017 Legislature:

- LC 172, creating a grant program for training volunteers to provide respite care for people with Alzheimer’s disease or other dementias and providing \$240,000 in funding for the grants;
- LCCF02, providing for reporting by investment advisers on suspected financial exploitation of vulnerable persons, including individuals with a mental disorder;
- LCCF4a, appropriating \$1.5 million to DPHHS to allocated to the state’s area agencies on aging for services targeted to individuals with Alzheimer’s disease or other dementias;
- LCCF6a, appropriating money to increase by 200 the number of Medicaid home and community-based waiver slots for senior and long-term care and to increase assisted living reimbursement rates by about \$23 a day and memory care rates by about \$45 a day; and
- LCCF7b, to create a working interdisciplinary network of guardianship stakeholders (WINGS) and establish a grant program for public guardianship services. The bill would sunset in six years.

The committee decided against introducing legislation for statewide facilitation of Alzheimer’s services and to require guardians and conservators to report suspected exploitation of their wards to DPHHS.