

**Senate Memorial 102 Task Force Progress Report
For the Disability Concerns Subcommittee
November 4, 2013**

SUMMARY

At the request of the State Senate in the Fifty-First Legislature through SM102, this task force was convened in July 2013 with the following stated purpose:

A Memorial requesting the Office of Guardianship to convene a focused working group to develop specific legislation to change the treatment guardian provisions of the Mental Health and Developmental Disabilities Code, taking the findings and discussion of the House Memorial Task Force Report [HM45] into consideration.

Who is a Treatment Guardian? A treatment guardian is a person temporarily appointed by a court to make mental health treatment decisions on behalf of an individual who the court finds by clear and convincing evidence is not capable of making their own treatment decisions and providing informed consent during a period of incapacity.

Who is the Primary Beneficiary? A narrow subset of adults in inpatient care or living in the community who are not capable of making mental health treatment decisions including providing informed consent due to mental illness.

Per data from the Administrative Office of the Courts, there were 665 petitions filed for treatment guardians statewide during 2012. It is unknown how many of these were repeat petitions filed on behalf of the same individual, so it may be that there was less than 665 individuals assigned treatment guardians for that year.

Who are Secondary or Indirect Beneficiaries? Providers within the service system and family members or friends, who may play a crucial role in assisting persons with mental illness who may temporarily lack capacity to make treatment decisions.

SM102 TASK FORCE MEMBERS

Representatives from the following offices and organizations have participated in the Task Force: the Office of Guardianship of the Developmental Disabilities Planning Council, the Department of Health, the Human Services Department, the National Alliance on Mental Illness New Mexico, the Public Defender Department, the Administrative Office of the District Attorneys, the Administrative Office of the Courts, the Office of the Attorney General, an individual living with mental illness, the Albuquerque Police Department, Disability Rights New Mexico and a corporate guardian contracted with the DDPC to provide treatment guardianship services.

The SM102 Task Force has met six times from July through October, 2013. The following report outlines progress to date and emerging recommendations from the Task Force.

PROPOSED RECOMMENDATIONS IN PROGRESS

The Task Force recommends strengthening the Treatment Guardian program both in terms of access and accountability. Over the last few years, it has become apparent that process improvements and additional resources are needed to operationalize the treatment guardian provisions of the New Mexico Mental Health and Developmental Disabilities Code to develop a uniform process statewide and make it accessible throughout the state. An efficient system that provides decision-making through treatment guardians will enable consumers to access appropriate treatment when needed, with an anticipated decrease incarceration and crisis/emergency room interactions. Some of the following recommendations will require additional resources to create long-term cost savings and improved experiences for consumers and families.

- Increase the accessibility of treatment guardians by ensuring that there are adequate numbers of qualified treatment guardians throughout the state, as well as increasing public information about how to use the treatment guardianship process.
- Several process improvement recommendations were discussed and are currently being addressed by the newly appointed New Mexico Supreme Court Ad Hoc Rules Committee for Mental Health Proceedings. The Rules Committee is tasked with making improvements in the treatment guardian process, including developing uniform forms and rules to improve efficiencies and consistency across the state.
- Improve the accountability of treatment guardians in part by developing and implementing a standardized training, outlining the scope of responsibilities and new processes developed by the Rules Committee. The Task Force also recommends expanding training for key partners including judges, lawyers, clinicians and family members to ensure there is a consistent process being used across the state.
- Continue to promote widespread use of Psychiatric Advance Directives (PADs) through increased outreach to consumers, families, clinicians, and other key stakeholders. Recommendation from HM45 as well – treatment guardianship may work best where an individual requests that his or her agent under a PAD be appointed as treatment guardian during a period of incapacity.
- Recommend legislation for the 2014 Legislative Session to authorize the Attorney General's Office to represent the State at petition hearings for treatment guardians through the use of special commissioned attorneys contracted to the Office of Guardianship.
- Treatment Guardians are currently paid a one-time stipend of \$200 for each individual they represent. Consider enhancing the DDPC budget to provide

an increase in the amount of this stipend in the short-term, and undertake an evaluation study to determine appropriate compensation for treatment guardians in the long-term (e.g. study should analyze cost-time analysis of direct, indirect, travel time with consumers, etc.).

- Address possible gaps in case management services for consumers post-discharge by developing a constructive linkage between treatment guardians, discharge planners and Managed Care Organization Care Coordinators to improve the coordination of care for consumers returning to the community.
 - It is important to note that not everyone with a treatment guardian will be a Medicaid recipient, so that coordination of care for those on private insurance or without an MCO to coordinate care may continue to be a challenge. Opportunities for Core Service Agencies in local communities to fill that gap with additional funding should be explored.
- Improve data collection and reporting functions so that we improve our understanding of the utilization of treatment guardians and outcomes for consumers.

HOW WOULD WE MEASURE SUCCESS?

What outcomes/performance measures would tell us whether the treatment guardian process benefitted consumers?

- #/% of people who understand the option of accessing a treatment guardian and what treatment guardians can do (consumers, family members, providers, judges, lawyers, psychiatrists, care coordinators with MCOs & other key stakeholders)
- #/% of adults accessing treatment guardians (from inpatient or outpatient settings) who report improvement in quality of life issues (e.g. survey to ask consumers what issues are priorities for them – such as stabilization of housing, medications, employment, emotional support, outpatient care, appropriate inpatient care when needed - and have those conditions improved)
- #/% of adults who have created PADs and #/% who utilize PADs
- #/% of readmissions into to jails, hospital emergency rooms and/or hospitals within a specific time frame after a treatment guardian has been appointed, to assess whether there are fewer repeat jail admissions, emergency room visits, and hospitalizations when treatment guardians are involved

