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North Dakota Protection & Advocacy Project

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**NORTH DAKOTA HANDBOOK FOR GUARDIANS AD
LITEM IN ACTIONS FOR ADJUDICATION OF
INCAPACITY**

1990

**North Dakota Protection and Advocacy Project
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FOREWORD

Until the 1989 session, the North Dakota Legislative Assembly had made few changes to the Uniform Probate Code Guardianship and Conservatorship provisions since their 1973 codification. The prior enactments contained little actual directives regarding duties and responsibilities of guardians ad litem in proceedings seeking guardianship. Numerous questions existed concerning the degree an attorney, operating as a guardian ad litem, advocates for a proposed ward's wishes which are expressed by the *person* compared to the proposed ward's needs as determined by the guardian ad litem. The lack of specificity in the Uniform Probate Code, coupled with the question of the role of the guardian ad litem, has resulted in a diversity in the manner, method, and degree of representation by guardians ad litem.

Revisions made to the legislative provisions pertaining to guardians for incapacitated persons reflect the North Dakota Legislative Assembly's concern regarding the specificity in the previous law.¹ These changes were based upon a proposal developed by a task force organized by Legal Assistance of North Dakota, Inc., reflecting the views of a number of individuals and groups, including the North Dakota Association of County Judges.²

The specific changes created by these legislative changes are addressed, but these changes are not the major emphasis of this text. The primary emphasis of this text is the improvement of representation of individuals who may be offered to the court as proposed wards. The text includes educational material for attorneys regarding the service delivery systems that are available for proposed wards.

A guardian ad litem serves an essential role in assuring the protection of constitutional and statutory rights of the proposed ward while also protecting the physical and mental well being of the proposed ward. In order to provide this protection, a guardian ad litem must be knowledgeable in the law, and must also have a knowledge of the service delivery systems available which provide services for a proposed ward, and in turn reduce the need for guardianship, or eliminate the need altogether.

This handbook is aimed at guardianship of alleged incapacitated persons.³ Some application of the suggestions contained

1. N.D. CENT. CODE § 30.1-28 (1989); 1989 House Bill 1480; and 1989 N.D. LAWS 405.

2. See 1989 H.B. 1480 (Legislative History).

3. N.D. CENT. CODE § 30.1-28 (1989)(guardianship of incapacitated persons).

herein may be possible regarding representation of minors for whom guardianship is sought, solely based upon age.⁴

I. PRE-HEARING

Upon appointment but before the hearing, the guardian ad litem must answer certain questions pertaining to the manner and method of representation. These questions can be grouped into certain categories, including the role of the guardian ad litem, communication with the client, gathering information pertaining to the client, and the position to be taken by the guardian ad litem at the hearing.

A. WHETHER THE GUARDIAN AD LITEM SHOULD FUNCTION AS AN ADVOCATE OF THE CLIENT'S WISHES, OR AS A DECISION-MAKER MAKING DECISIONS AS TO WHAT IS IN THE BEST INTERESTS OF THE CLIENT, AND ADVOCATING FOR THE GUARDIAN AD LITEM'S OWN DECISION

1. *Advocate v. Decision-maker*

Because of varying degrees of capacity and varying levels of functioning by proposed wards, a guardian ad litem must initially determine the extent he or she is functioning as an advocate as compared to a decision-maker.⁵

An attorney normally functions as an advocate for the *wishes* of the client. An attorney is charged with abiding by the client's decisions concerning the objectives of representation, subject to exceptions pertaining to criminal activity, bad faith, or unethical conduct.⁶ The appointment of an attorney to function as a guardian ad litem inherently recognizes that the proposed ward *may* lack the ability to provide for his or her representation and that it may be necessary for the attorney to make some decisions normally reserved for the client.⁷ The decision to function as an advocate rather than a decision-maker depends upon a number of factors, but the primary factor is the ability of the proposed ward to express his or her adequately considered decisions on the matters pertaining to representation.⁸

4. N.D. CENT. CODE § 30.1-27 (guardianship of minors).

5. M. Webster, *A Study of Guardianship in North Dakota*, 60 N.D.L. REV. 45 (1984).
See also N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986).

6. N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.2 (1984).

7. N.D. CENT. CODE §§ 30.1-03-03(4) (1989) and 30.1-28-03(4)(c) (1989).

8. N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986).

To determine the proposed ward's ability to express his or her adequately considered decisions, it is crucial for the guardian ad litem to establish meaningful contact with the proposed ward. Many proposed wards may be confused by the nature of the guardianship proceedings, inhibited to the point of being noncommunicative, or may simply refuse to deal with a guardian ad litem. A guardian ad litem should not presuppose that the client lacks the ability to express his or her adequately considered decisions. A guardian ad litem should take the time to meet the person (several times, if necessary), and explain in detail the nature of the proceedings to ascertain the ability of the proposed ward to express his or her adequately considered decisions.

2. *Order Appointing Guardian Ad Litem and Subsequent Orders*

The decision regarding whether to act as an advocate or decision maker may be answered to some degree by the order for appointment. The court may specifically address the role of the guardian ad litem as being either an advocate or a decision maker.⁹ If the attorney appointed as guardian ad litem has substantial questions regarding his or her role as an advocate as distinguished from a role as a decision-maker, it may be necessary to petition the court for clarification of the role of the attorney.

3. *Statutes and Rules of Court*

The guardianship law requires the court to appoint an attorney to act as a guardian ad litem.¹⁰ The duties of the attorney include representing the proposed ward as guardian ad litem (unless directed otherwise).¹¹ Additionally, if the appointed attorney or another attorney is retained by the proposed ward to act as an advocate, the guardian ad litem is required to promptly notify the court, and the court may determine whether the attorney should be discharged from the duties of guardian ad litem.¹²

An ethical analysis of whether to act as advocate or decision

9. See N.D. CENT. CODE § 30.1-28-03(4)(c) (1989)(the guardian ad litem may be retained by the proposed ward to act as an advocate). This subdivision infers that the court has authority to specify the role to be served by the attorney. *Id.* See also N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986)(client under disability).

10. N.D. CENT. CODE § 30.1-28-03(3) (1989)(attorney as guardian ad litem).

11. N.D. CENT. CODE § 30.1-28-03(4)(c) (1989)(court may order discharge of guardian ad litem).

12. *Id.*

maker is addressed by Rule 1.14 of the North Dakota Rules of Professional Conduct, which provides:

When a client's ability to make adequately considered decisions in connection with the representation is impaired, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.¹³

The comments to Rule 1.14 of the North Dakota Rules of Professional Conduct incorporate a sliding scale of representation depending upon the severity of the incapacity of the client.¹⁴ In order to assure protection of the constitutional and statutory rights of the proposed ward, recognizing that individuals including the petitioner, petitioner's counsel, visitors, physicians or clinical psychologists, and the court itself will be attempting to determine the needs of the proposed ward, it is strongly suggested that the guardian ad litem, to the extent reasonably possible, function as an *advocate for the wishes of the proposed ward*.

The proposed ward usually lacks either the funds or the ability to contract separately for his or her own counsel. This inability heightens the need to act as an advocate, rather than a decision-maker. In order to provide maximum representation, the guardian ad litem should advocate for the expressed wishes of the proposed ward. However, it is recognized that in some situations, the guardian ad litem must advocate for what the guardian ad litem perceives is in the best interests of the proposed ward. This may

13. N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986)(Official Comments):

In those situations where a legal representative has been appointed to act on behalf of the client, it should be kept in mind that the powers and duties of such representative vary depending upon the nature and extent of the client's disability. The lawyer in the course of representing the client should be cognizant of the powers and duties conferred upon the client's legal representative by the appointing authority as such enumeration of powers and duties will delineate what types of decisions the client may or may not make with regard to the client's own care and well-being, or concerning management of the client's property.

In those situations where a legal representative has not been appointed but in the lawyer's professional judgment such an appointment would serve the client's best interests, or is in fact necessary for the effective completion of a transaction involving the client's property, the lawyer should seek to have a legal representative appointed to act on behalf of the client. The nature and extent of the client's disability may be disclosed by the lawyer to the extent the lawyer reasonably believes necessary to obtain the appointment of a legal representative.

14. N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986). The Official Comments specifically discuss court appointment of the attorney, and that certain conditions including "mental illness, mental deficiency, physical illness, or disability, chronic use of drugs, chronic intoxication, or other such causes" may impair the normal client-lawyer relationship. *Id.* Therefore, it can fairly be implied that this rule is applicable to guardianship.

be necessary in situations where the proposed ward is unable to express adequately considered decisions or if the proposed ward is completely unable to express wishes regarding guardianship. Where doubt exists as to the nature of representation, the question should be answered in favor of being an advocate for the proposed ward's wishes, rather than being a decision-maker.

A proposed ward who can express his or her own decisions in situations where the guardian ad litem does not believe that these decisions are adequately considered, should not be deprived of his or her ability to express these decisions to the court. At a minimum, the guardian ad litem should express to the court the decision of the proposed ward, together with what the guardian ad litem perceives to be in the proposed ward's best interest.

B. WHAT OTHER DUTIES DOES A GUARDIAN AD LITEM HAVE?

In addition to functioning as an advocate for the proposed ward's wishes or needs, the guardian ad litem is expected to fulfill other functions based upon statutory enactments. North Dakota Century Code § 30.1-28-03(4) sets forth three basic duties:

1. Personally interview the proposed ward. This interview should be a face to face meeting with the proposed ward to allow the guardian ad litem to observe the demeanor of the proposed ward.

2. Explain the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequence of the proceeding, the rights to which the proposed ward is entitled, and the legal options that are available. The intention of this provision is to explain to the maximum extent possible, the nature and effect of the proceedings, and the legal options that are available.

3. Represent the proposed ward as guardian ad litem. In representing the proposed ward, the guardian ad litem will need to make a determination of the exact nature of the guardian ad litem's role, whether as an advocate or decision-maker. It is also inherent in the representation of the proposed ward that the guardian ad litem assure that the other individuals involved in the proceeding, including the visitor, physician or clinical psychologist, and the court fulfill their roles as set forth in statute, to allow the proposed ward his or

her constitutional and statutory rights.¹⁵

C. WHAT METHODS ARE AVAILABLE TO IMPROVE COMMUNICATION WITH A PROPOSED WARD?

Communication with a proposed ward may be difficult. The manner and method of communication with the proposed ward may substantially impact the ability of the guardian ad litem to provide full representation. The guardian ad litem must explain the proceedings in a language, mode of communication, and in terms that the proposed ward is most likely to understand. Although many attorneys are hesitant to meet with a client in the presence of a third party, this may be necessary. Individuals who know the proposed ward may be able to literally open the door, and allow full communication between the guardian ad litem and the proposed ward. Many proposed wards may be extremely inhibited, and unwilling to communicate to a guardian ad litem. Usually the proposed ward knows little about the guardian ad litem, and may see the guardian ad litem as an interference with the normal routine of the proposed ward. Therefore, it may be necessary to employ the services of a third person to open a line of communication. These third persons may include family members, direct service providers (i.e. nursing home, day service, or group home workers), Department of Human Services case managers (for persons with developmental disabilities or mental illness), Protection and Advocacy Project advocates, Long Term Care ombudsmen, county social workers, nursing home staff, or any other individual who is a close friend or acquaintance of the proposed ward. It is suggested that such a person be neither the proposed guardian nor the person signing the petition for guardianship. After a rapport has been established, the third party should be removed from the conversation to the maximum extent possible to assure confidentiality.

In talking with the proposed ward, it is absolutely essential to keep matters on a simple level. The proposed wards may have difficulty following complicated or legalistic explanations of guardianship proceedings. The explanation employed by the guardian ad litem should be as simple as possible to make sure that the true impact of the proceedings is communicated. Questions to the proposed ward should not be leading, but rather should be open

15. N.D. CENT. CODE § 30.1-28-03(4) (1989)(codification of guardian ad litem duties).

ended to give the ward the ability to respond with his or her true feelings or abilities.

D. WHAT OTHER SOURCES OF INFORMATION ARE AVAILABLE?

Other sources of information are extremely important to determine the functioning ability of the proposed ward. In addition to family and friends, there are certain groups of individuals who may have significant knowledge regarding the proposed ward:

1. *Service providers for the aged.* If the proposed ward is elderly, the person may have been in, or may currently be in, a nursing home receiving residential services. In addition to residential services, the proposed ward may be receiving other services for the elderly, including protection under the Long-term Care Ombudsmen Program,¹⁶ Aging Services Programs,¹⁷ Adult Protective Services,¹⁸ county or city nursing services, senior center services, or from a nursing home social worker.

2. *Service providers for People with Developmental Disabilities or Mental Illness.* Many individuals who are offered to the court as proposed wards may have either a developmental disability or mental illness. These terms do *not* signify a single level of functioning or need for guardianship. The term developmental disability has a specific statutory definition, as set forth in North Dakota Century Code 25-01.2-01.¹⁹ The largest group of individuals with developmental disabilities are individuals with mental retardation. Individuals who have developmental disabilities may be receiving services from a number of sources, including the Developmental Disability Division of the Department of Human Services (Case Management Services), day program services, workshop services, vocational services (through Vocational Rehabilitation), residential services, or advocacy services (through the Protection and Advocacy Project for the State of North Dakota).

Services for individuals who have developmental disabilities are determined by an individualized habilitation plan team. Any

16. N.D. CENT. CODE § 50-10.1 (1989)(Long-Term Care Ombudsmen).

17. N.D. CENT. CODE § 50-06-01.4(3) (1989)(aging services programs).

18. N.D. CENT. CODE § 50-25.2 (1989)(Vulnerable Adult Protection Services).

19. N.D. CENT. CODE § 25-01.2-01 (1983).

institution, facility, agency, or organization that provides services for persons who have developmental disabilities is required to have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, agency, or organization is primarily responsible to for delivering, or coordinating the delivery of services. One of the specific items to be addressed by the individualized habilitation plan is whether the individual with developmental disabilities appears to need a guardian. If the individual appears to need a guardian, the plan must then specify the type of protection needed by the individual based upon the individual's actual mental and adaptive limitations and other conditions which may warrant the appointment of a guardian.²⁰ A guardian ad litem will therefore want to review the individual habilitation plan and team minutes reflecting the plan preparation.

a. *Investigation of Additional Resources.*

Individuals with mental illness are eligible for certain programs under state and federal law, and may be receiving services under programs offered by the Department of Human Services', Mental Health Division, and may be receiving advocacy services through the Protection and Advocacy Project for the State of North Dakota.

Any individual with a developmental disability or mental illness who is under the age of 22 may be receiving special education services through the person's local school district.²¹

A case manager, or a Protection and Advocacy Project advocate, who has been working with the proposed ward could be an excellent source for information. Other sources of information which should be considered by the guardian ad litem include interviews with the other individuals involved in the guardianship including visitors, physicians, clinical psychologists, the person petitioning for guardianship, the proposed ward's counsel, and the proposed guardian.

E. WHETHER THE LEVEL OF GUARDIANSHIP SOUGHT IS THE LEAST RESTRICTIVE FORM OF APPROPRIATE INTERVENTION?

One of the most significant decisions to be made by the guard-

20. N.D. CENT. CODE § 25-01.2-14 (1983)(contents of individual habilitation plan).

21. See 20 U.S.C. §§ 1400-1485 (1988)(Education of the Handicapped); and N.D. CENT. CODE § 15-59 (1989)(Special Education of Exceptional Children).

ian ad litem is whether the level of guardianship or conservatorship sought by the petitioner is the least restrictive form of intervention consistent with the ability of the ward for self-care. This analysis is important regardless of whether the guardian ad litem is functioning as an advocate for the proposed ward's wishes or as a decision-maker. North Dakota law clearly imposes upon the court the duty to:

1. Determine the extent to which guardianship is appropriate (whether full authority, limited authority, or no authority) in areas of residential, educational, medical, legal, vocational, and financial decision-making;²²
2. Exercise its authority in a manner consistent with the maximum self-reliance and independence of the incapacitated person, and to make appointed or other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure;²³ and
3. Order the appointment of a guardian only in those areas which the ward is shown to be incapacitated.²⁴

Some areas of specific concern are delineated by the North Dakota Legislative Assembly, including residential, educational, medical, legal, vocational, and financial decisions.²⁵ Additionally, the court must enter specific findings before a ward can be deprived of the legal right to vote, to seek a change in marital status, to obtain or retain a motor vehicle operator's license, or to testify in any judicial or administrative proceedings.²⁶ The guardian also lacks the ability to involuntarily admit a ward to a mental health facility, state institution, or secured unit of a long-term care for a period of more than 45 days without a mental health commitment proceeding or other court order.²⁷

It may be helpful for a guardian ad litem to follow a multi-tiered approach as to the least restrictive alternatives. In deciding what degree of guardianship to advocate for, it must be presumed

22. N.D. CENT. CODE § 30.1-26-01(2) (1989)(areas of concern regarding disability); and 30.1-28-04(5) (1989)(orders regarding specific areas of disability).

23. N.D. CENT. CODE § 30.1-28-04(1) (1989)(authority of the court).

24. N.D. CENT. CODE § 30.1-28-04 (1989)(authority of the court).

25. N.D. CENT. CODE §§ 30.1-26-01(2) (1989); 30.1-28-03(2)(f) (1989); and 30.1-28-04(5) (1989).

26. N.D. CENT. CODE § 30.1-28-04(3) (1989)(a specific finding is necessary to limit the ward's rights in these areas).

27. N.D. CENT. CODE § 30.1-28-12(2) (1989)(limitation on commitment of ward by guardian).

that the proposed ward needs no guardianship unless otherwise shown. A ward should always be entitled to a limited guardianship unless needs are otherwise established.²⁸

1. *What is the nature of the proposed ward's impairment?*

Normally an impairment which is the basis for a guardianship proceeding will have a name or recognized diagnostic grouping. These groupings may include:

A. *Developmental disability.* This is a functional definition which can include conditions such as mental retardation, autism, severe learning disabilities, and other severe and chronic disabilities which reflect the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration.²⁹

B. *Mental illness.* These individuals have recognized psychiatric impairments.³⁰ This may include dementia and delirium. Delirium is the "clouding of consciousness."³¹ Dementia has the essential feature of loss of intellectual abilities which is of sufficient severity to interfere with social or occupational functioning.³² Both delirium and dementia are organic brain syndromes. Although an organic factor is always assumed to be the cause, in certain cases the cause may not be known.³³ The term dementia implies a progressive or irreversible course, but the organic disorder may be progressive, static, or remitting.³⁴ Dementia may be due to neurological diseases or due to substance induced organic mental disorder.³⁵

C. *Aging.* A petition which has the advanced age of the proposed ward as the sole reason for guardianship should be subject to substantial scrutiny by the guardian ad litem. While advanced age may increase the possibility of impairment of

28. N.D. CENT. CODE § 30.1-28-04(1) (1989)(maximum self-reliance).

29. See N.D. CENT. CODE § 25-01.2-01 (1989)(definition of developmental disability) and § 25-01-01(4) (1989) (definition of mentally deficient person). See also 42 U.S.C. § 6042 (1987).

30. See N.D. CENT. CODE §§ 25-01-01(5) (1989); 25-03.1-02(9) (1989); 25-03.1-02(10) (1989); and 57-38-01(0.1) (1989). See also 42 U.S.C. § 10802 (1987).

31. J. Krouskopf, *Advocacy for the Aging*, 95-96 (1983)(setting forth the text of the Diagnostic and Statistical Manual of Mental Disorders, A.P.A. (Third Ed. 1980)).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

the person, the critical question remains to be whether the person is incapacitated as defined by statute.³⁶

2. *What is the severity of the impairment?*

Simply because a proposed ward has a recognized diagnostic grouping or impairment does not mean that there is an impairment causing the lack of capacity to make or communicate responsible decisions. A proposed ward who is classified as having mental retardation is not presumed to be incompetent. The law recognizes that no presumption exists simply because a person receives developmental disability or mental illness services.³⁷ It must also be kept in mind that, a person's age does not determine the level of functioning of that person.

In determining the severity of the impairment, it will be important to review records and materials pertaining to the proposed ward generated by the individuals responsible for his cares. For example, it is possible that the person may have been in a nursing home. If so, the records of the nursing home, especially the pre-admission screening or functional assessments, will be valuable sources of information.

Documents showing the severity of impairment may also be located at the Human Service Center for the region where the proposed ward resides.³⁸ The files of the Human Service Center will contain substantial information pertaining to the proposed ward, such as, assessments by psychologists, as well as other records and information from current or previous developmental disability service providers. If the proposed ward has a mental illness, the person may have a file, including a copy of the person's individualized treatment plan, at the Human Service Center for the region where the person resides. If the guardian ad litem would like to obtain these files, a copy of the appointment order should be brought to the institution from which records are sought since facility staff are obligated to confidentiality.

After accessing records, the guardian ad litem must determine the level of guardianship required, if indeed any is needed. The guardian ad litem must advocate for the least restrictive form

36. See N.D. CENT. CODE § 30.1-26-01(2) (1989)(definition of incapacitated person).

37. N.D. CENT. CODE § 25-01.2-03 (1989)(prohibition of presumption of incompetency). See also N.D. CENT. CODE § 25-03.1-33 (1989)(no presumption of incompetency from commitment proceedings).

38. N.D. CENT. CODE §§ 50-06-05.2 (1989) and 50-06-05.3 (1989)(Human Service Centers are the direct service vehicles of the Department of Human Services).

of guardianship possible. In so doing, the guardian ad litem may wish to take the position that the guardianship can always be made more restrictive. Many proposed wards need to learn to make responsible decisions regarding their lives. These decisions may need to be made or taught in settings where the person can learn the ramification of a poor choice. Protecting the personal safety of the ward and others can be accomplished while granting significant authority to the ward over non-critical decisions. An overly restrictive guardianship does not serve as an educational tool for the ward.

3. *Whether the impairment, although severe enough to warrant the appointment of a guardian, can be lessened or eliminated by other measures less drastic than guardianship*

Guardianship in North Dakota and in many other states has been considered a benevolent act by society to protect less fortunate individuals. Protection is afforded through deprivation of the ward's basic human liberties. Therefore, guardianship is a drastic measure which should only be taken if no other alternatives exist.

- a. Alternative Resource Plans

North Dakota law requires the court to consider Alternative Resource Plans.³⁹ An Alternative Resource Plan provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of services such as: visiting nurses, homemakers, home health aids, personal care attendants, adult day care facilities, multi-purpose senior citizen homes, home and community based care services, county social services, developmental disability and mental health services, powers of attorney, representative or protective payees, and licensed congregate care facilities.⁴⁰

Training is one method which may be employed in an Alternative Resource Plan to eliminate or reduce the need for a guardianship. There may be a number of programs which are available through the Department of Human Services or other private programs which may eliminate or reduce the need for guardianship. Training programs in areas such as assertiveness, money manage-

39. N.D. CENT. CODE § 30.1-28-04(2)(b)(2) (1989)(alternative resource plan).

40. N.D. CENT. CODE § 30.1-26-01(1) (1989)(definition of alternative resource plan).

ment, communication, choice making and behavior management are examples of options which may be available to change or eliminate eccentric or unacceptable behavior which may be the cause of the guardianship petition. It is important to remember that if the petitioner is seeking guardianship because of the ward's behavior, a guardianship order may not eliminate the problem. A guardianship order may not change the adverse behavior of the ward, such as physically abusive actions, but it may allow the guardian to respond to these actions. Therefore, training or education may be an alternative to the implementation of a guardianship order.

b. Family Advocacy

Family advocacy is a method which encourages participation by family members to reduce or eliminate the need for guardianship. Many proposed wards retain strong ties to their families, and will give significant weight to any suggestion made by family members. Although family advocacy can be used as an alternative to guardianship, one potential problem may be the lack of accountability by a family member to the court. While a guardian must make a decision in the best interests of a ward, a family member who is not acting as a guardian may not be subject to the same fiduciary responsibilities of a guardian. Therefore, any family advocacy alternative must be closely scrutinized by the guardian ad litem.

c. Special Financial Arrangements

Special property arrangements such as joint bank accounts, trusts, powers of attorney, and representative payees may reduce or eliminate the need for a guardianship or conservatorship. In some instances, especially with the aged, guardianship or conservatorship may be initiated by children or relatives because of a fear that the proposed ward lacks the ability to handle his or her finances. Controlled bank accounts, trusts or other special property arrangements may eliminate or reduce these concerns. These special property arrangements may also eliminate the concerns of those individuals who feel they lack the ability to handle their own funds and property, and therefore, wish to have a guardianship or conservatorship imposed upon themselves. A representative payee is an individual designated by Social Security to receive supplemental security funds, and to pay those funds to the

recipient.⁴¹

An Alternative Resource Plan must be suitable to safeguard the proposed ward's health, safety, and habilitation. Although not specifically stated in the law, it appears that an Alternative Resource Plan can either eliminate the need for guardianship, or in the alternative, it could be used in combination with a guardianship order to eliminate the need to address additional areas in the guardianship order.

F. WHETHER THE PURPOSE BEHIND THE GUARDIANSHIP IS LEGITIMATE?

In considering the guardian ad litem's position regarding the need for guardianship, the guardian ad litem should consider the motivation of the individual seeking the guardianship. The vast majority of petitioners are forthright with their legitimate intentions and motives, and deal with the proposed ward with compassion and care. However, it is possible that the person seeking guardianship may be seeking authority not warranted by the facts in order to gain additional control of the proposed ward for non-legitimate purposes. These purposes may include:

1. institutionalization of the proposed ward;
2. seeking to block the move of a proposed ward from an institutional setting to some other residential setting; and
3. seeking to block discharge from a group home or nursing home.

The proposed guardian may also be seeking limitation of family privacy rights, including limitation of the right to be married or divorced, seek an abortion, or seek sterilization. Express authorization by the court is necessary in order to empower a guardian to make many of these types of decisions for a proposed ward.⁴² The proposed guardian may also be seeking authority over a proposed ward who has a mental illness for the purpose of personal convenience, to control the admission of the proposed ward for treatment purposes, or to avoid procedures intended to protect the proposed ward's rights.

A proposed guardian may also be seeking control over services to be received by the proposed ward, including educational,

41. 20 C.F.R. §§ 416.601-416.665 (1990).

42. See N.D. CENT. CODE §§ 30.1-28-12(4) (1989); 25-01.2-09 (1981); and 25-01.2-11 (1989)(prohibition of psychosurgery, sterilization, and other adverse action without court order).

vocational, residential, or other services. Service providers for individuals with developmental disabilities meet as individual habilitation plan teams with the proposed ward to determine what services are appropriate.⁴³ However, a service determination by a planning team is not limited to individuals with developmental disabilities.⁴⁴ In some situations a proposed guardian may be seeking control because he or she disagrees with the team's decision, or because he or she wishes to remove the proposed ward from services. Such situations should be viewed cautiously by the guardian ad litem, considering the best interests of the proposed ward, and the preferences expressed by the proposed ward.⁴⁵

It is also possible that a proposed guardian may be seeking appointment as guardian to control the finances of the proposed ward. Many elderly individuals fear that their families may seek the appointment of a guardian or conservator to control their finances. Relatives may seek determination of incapacity to prevent dissipation of the proposed ward's assets, so that these assets may be passed on to the heirs. Situations where potential heirs seek financial control should be closely scrutinized by the guardian ad litem to determine if the potential exists for conflict of interest.

Inquiry should be made of the proposed guardian as to his or her intentions in imposing or modifying a "Do Not Resuscitate" order or a "No Code" status. In some situations the guardianship order may have the sole purpose of authorizing the removal of life sustaining medical equipment. The guardian ad litem should make himself or herself aware of these possibilities and whether the proposed ward opposes the procedure, or whether the procedure is medically or legally warranted.

G. WHETHER THE PROPOSED GUARDIAN IS QUALIFIED?

The guardian ad litem must be concerned with the qualifications of the individual who is proposed as guardian. The guardian ad litem should review the ability and intent of the proposed guardian. North Dakota law recognizes that a guardian must serve in a manner which allows the proposed ward to function to the greatest extent possible within his or her actual limitations.⁴⁶ The guardian must not interfere with the ward's exercise of his or

43. N.D. CENT. CODE § 25-01.2-14 (1989)(codifying several duties for individual habilitation plan teams).

44. N.D. ADMIN. CODE § 75-05-04-03 (1987).

45. *Supra* notes 13-14 and accompanying text.

46. *See supra* notes 21-27 and accompanying text.

her maximum personal freedom and involvement in decision making except as authorized by the Court.⁴⁷ The proposed guardian should be caring and concerned for the proposed ward, and should have no conflicts of interest which would prohibit the ward from receiving services.⁴⁸ In the absence of a qualified guardian with priority, the court may appoint a corporate guardian or public administrator as guardian.⁴⁹

In interviewing the proposed guardian, the guardian ad litem should specifically inquire into the plans the proposed guardian would institute regarding the proposed ward. Plans for changes in the current situation of the proposed ward or for maintenance of that situation, should be reviewed in light of the fiduciary duty of the guardian to make decisions in the best interests of the ward. Significant changes which run contrary to the desires and needs of the proposed ward should be given substantial scrutiny by the guardian ad litem.

H. VENUE

The guardian ad litem should consider whether venue is proper.⁵⁰ A motion should be brought to change venue if necessary or appropriate.

II. HEARING

Although most of the work of the guardian ad litem should be completed in advance of the hearing, full representation of the person at the hearing is necessary to assure protection of the proposed ward's rights. Full representation should include allowing the proposed ward the ability to fully communicate his or her position regarding the guardianship to the court. The ability to communicate with the court usually requires the physical presence of the proposed ward in the courtroom.

Statutorily, the proposed ward must appear in person present at the hearing, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the pro-

47. N.D. CENT. CODE § 30.1-28-12(5) (1989)(assurances of maximum involvement of ward).

48. N.D. CENT. CODE § 30.1-28-11 (1989)(sets forth the priorities for appointment, but also allows the court to pass over a person having priority and appointing a person with a lower priority, if in the best interest of the incapacitated person).

49. N.D. CENT. CODE § 30.1-28-11(3)(g) (1989)(allowing appointment of nonprofit corporation); and N.D. CENT. CODE § 11-21-05(8) (1973).

50. N.D. CENT. CODE § 30.1-28-02 (1989).

posed ward to attend the hearing.⁵¹ All necessary steps must be taken to make the courts and the court proceedings accessible and understandable to impaired persons. In order to further accessibility, the Court is expressly empowered to convene at any other location if it would be in the best interest of the proposed ward.⁵²

Many proposed wards, although physically present, may lack the ability to fully communicate their positions or to fully understand the nature of the proceedings. Methods of communication available to increase the communicative ability of the proposed ward may include: the use of an interpreter or friend to explain the proceeding, the use of an electronic touch talker device or picture board to allow the proposed ward to communicate with others, and the positioning of the proposed ward in such a way as to easily see the faces of all the parties involved in the proceeding. These methods will all increase the proposed ward's communication abilities and understanding of the proceedings.

In addition to the proposed ward's ability to communicate with the court, the guardian ad litem must also assure full representation of the proposed ward through utilization of the guardian ad litem's legal training. In the guardianship hearing, it appears that the rules of evidence are applicable, and are in full force and effect.⁵³ The proposed ward, if he or she so chooses, does have the ability to present evidence and to cross-examine witnesses.⁵⁴ Further, there is authority which allows the closing of a hearing if requested by the proposed ward or the proposed ward's counsel.⁵⁵ This may be especially beneficial where a client is inhibited in the presence of a large group of people. Where this is the case, the court room can be closed in order to establish a better atmosphere in which the proposed ward can communicate freely.

At the hearing, the guardian ad litem should scrutinize the roles played by the other participants, especially the roles of the physician, the clinical psychologist and the visitor. The physician or clinical psychologist is required to submit a written report which is much more detailed than the previous legal requirements.⁵⁶ It has been the practice of some courts in the past to allow the physician or clinical psychologist to submit the written

51. N.D. CENT. CODE § 30.1-28-03(7) (1989)(ward's involvement at the hearing).

52. N.D. CENT. CODE § 30.1-28-03(8) (1989)(accessibility to court).

53. N.D.R. EVID. Rules 101 and 1101.

54. N.D. CENT. CODE § 30.1-28-03(7) (1989).

55. *Id.*

56. Compare N.D. CENT. CODE § 30.1-28-03(5) (1989) with N.D. CENT. CODE § 30.1-28-03(2) (1985).

report, and not be required to testify at the hearing. If this is the case, the guardian ad litem may wish to communicate with the physician or clinical psychologist prior to the hearing and obtain an oral explanation of the written report. If further explanation is necessary, it can be obtained from the physician or clinical psychologist in writing before the hearing. If necessary, the physician or clinical psychologist should be subpoenaed for the hearing.

The use of a psychologist may be beneficial in a number of ways. In many cases, physicians have been asked to submit written reports pertaining to the functioning ability of a person for whom they may have had little, if any, contact. Many proposed wards have been, or should be, assessed by clinical psychologists to determine the extent of the impairment upon their ability to function, and to perform other testing which would give the court the best estimate of the severity and duration of the incapacity or disability, as well as the capacity for continued intellectual growth and development. Less weight should be given to nonfunctional equivalents, such as intelligence quotients (IQs) or age equivalents (mental age), than the actual ability shown by the proposed ward.

If the proposed ward has a diagnosed mental illness, it is important to remember that the illness may be cyclical, and a guardianship which addresses only the more difficult side of the cycle will not address the more positive side. Flexibility is needed to allow greater freedom when warranted.

In addition to medical and mental health personnel, the guardian ad litem should also scrutinize the actions of the visitor. The responsibilities and duties of the visitor have been more clearly delineated under current law.⁵⁷ It is the responsibility of the guardian ad litem to make sure that the visitor has complied with the duties set forth by state law. There is no statutory requirement that the visitor be present at the hearing. Therefore, it is essential that the guardian ad litem contact the visitor in advance to ascertain whether the visitor will be at the hearing, and whether there is any information not in the report which would be relevant to the court's decision or whether any clarification is necessary. The visitor should be subpoenaed to appear at the hearing if necessary.

At the hearing, the role of the guardian ad litem should not be to oppose every guardianship. The guardian ad litem should scru-

57. Compare N.D. CENT. CODE § 30.1-28-03(6) (1989) with N.D. CENT. CODE § 30.1-28-03(2) (1985).

tinize the proposed guardianship to make sure that no less restrictive possibility exists, and to make sure that it is in fact a situation which warrants the appointment of a guardian.

It may be necessary in certain situations for the guardian ad litem to request specific records to determine the capacity or incapacity of the proposed ward. These records may include assessments, records from individualized habilitation, education or treatment plans, minutes from habilitation, education or treatment plan meetings, educational records, etc.⁵⁸ These records may often be obtained from facilities or organizations in which the proposed ward is receiving or has received such specialized services.

III. POST HEARING

The guardian ad litem should review the order for guardianship and the letters of guardianship to make sure they comport with the court's decision. The guardian ad litem must then explain in detail to the ward the effect of the guardianship order and what legal options remain open to the ward. It should however be noted that there have been few guardianship orders from which appeals have been taken. Many guardians ad litem are reluctant to pursue an appeal, especially considering that the petitioner is normally the person who may be paying the fees and costs of the guardian ad litem. However, if grounds for appeal exist, an appeal should be considered. A ward's decision to appeal should reflect the wishes of the ward to the extent possible.⁵⁹ In determining whether an action is necessary subsequent to the guardianship order, including appeal or motion to amend the guardian order, the guardian ad litem should attempt to conduct a normal attorney-client relationship with the ward to the extent allowed under the circumstances.

Post order modification of the guardianship may also require the attention of the guardian ad litem.⁶⁰ With the resignation, removal, death or disability of the guardian, it may be necessary to appoint a new guardian. Additionally, it may be necessary from time to time to modify the authorities granted to a guardian. Post-order proceedings would normally be commenced some period of time after conclusion of the original guardianship by service of a petition for modification of the guardianship. The petition may

58. See *supra* notes 16-20 and accompanying text.

59. N.D. RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986).

60. N.D. CENT. CODE §§ 30.1-28-06 (1989); 30.1-28-07 (1989); and 30.1-28-13 (1989).

seek a change in the guardian, the extent of the guardianship or other changes. Although there is no express requirement in North Dakota Century Code Chapter 30.1-28, substantial changes to the guardianship should be treated as a new petition with appointment of a guardian ad litem, and compliance with other procedures codified within the chapter to assure protection of the ward's rights.

GLOSSARY

The following is a list of terms frequently used within the developmental disabilities, mental illness, and aging service delivery systems. Each term is followed by a code which depicts the target population associated with the definition. The code is as follows:

- (A) - Aging/Elderly
- (DD) - Developmental Disability
- (MI) - Mental Illness

Adult Day Care (DD) -

A program which emphasizes maintaining and reinforcing previously acquired competencies through social, recreational and therapeutic activities. Adult Day Care, which serves primarily elderly individuals, is not transitional in nature and provides for long term services.

Aging Services (A) -

A division of the Department of Human Services which is responsible for administering the Older Americans Act of 1965, as amended. The Act provides funds for the development of support services and nutritional service programs designed to meet the needs of elderly residents and to help maintain their independence and self reliance to the maximum degree possible.

Basic Care Facility (A) -

In accordance with N.D. Cent. Code § 23-09.3-01 (Definition of basic care facility) any place not licensed by the Department of Health and operated by any person, institution, organization, or private or public corporation, in which five or more individuals not related by blood or marriage to the owner or manager are received, kept and provided with food, shelter, and care for hire or compensation. Services include

routine maintenance and supportive care with activities of daily living which need not be provided in an institutional setting by medical personnel, can be administered without possible harm to the health of individuals, and has no significant relationship to medical care of any type.

Case Management (DD) -

Regional services provided through the Department of Human Services, Developmental Disabilities Division, which determine eligibility to DD services/programs, and assist individuals in gaining access to appropriate residential, vocational and other habilitative programs.

Case Management (MI) -

Regional services provided through the Department of Human Services, Mental Health Division, which determine eligibility to Mental Health services/programs, and assist individuals in gaining access to appropriate residential, vocational, treatment and other habilitative programs.

Congregate Care (DD) -

A group residential service which provides programming for elderly individuals to assist in the maintenance of previously acquired skills. The health and medical conditions of these individuals are stable and they do not require continued nursing or medical care.

County Social Services (A, DD, MI) -

County agencies which determine eligibility to and administration of economic assistance and other Public welfare programs.

Developmental Day Activity (DD) -

An adult day service in which training emphasizes stimulation, exposure and reinforcement in activities of daily living. The activities may include communication skills, self awareness, physical and emotional development, grooming and hygiene.

Developmental Disability (DD) -

A severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age 22; is likely to continue indefinitely; results in sub-

stantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living and economic self-sufficiency; and reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life long or extended duration and are individually planned and coordinated.

Developmental Disabilities Division (DD) -

A division of the Department of Human Services which contracts, licenses and monitors providers of services to individuals with developmental disabilities. The division interacts closely with regional human service centers where DD Administrators and Case Managers Provide technical assistance and service coordination on the local level.

Developmental Work Activity (DD) -

An adult day service in which training emphasizes exposure and reinforcement to vocational or work related skills.

Electronic Touch Talker (DD) -

A computer approximately the size of a small briefcase which is composed of several small pictures and/or diagrams. Pictures are activated by touch and messages are translated into synthesized speech.

Home Health Services (A, DD, MI) -

Services furnished to an individual in his/her home by an agency engaged primarily in providing skilled nursing and other therapeutic services under a plan established and supervised by a physician. Services may include part-time or intermittent nursing care: physical, occupational and speech therapy, and the use of medical appliances. Services must be furnished by or under arrangement with an approved home health agency.

Individualized Care Plan (A) -

A written plan developed for each resident of an intermediate care facility or skilled nursing facility which must include goals to be accomplished by the resident; an integrated program of activities, therapies or treatments designed to assist a resident to achieve his/her goal which indicates who is

responsible for each service prescribed in the plan. Care plans must be reviewed and revised at least quarterly.

Individualized Education Plan (I.E.P.) (DD, MI) -

As required by the Education of All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 776 (codified as amended at 20 U.S.C. §§ 1401(19); 1412(2)(B),(4),(6); 1414(a)(5) (1975)), and N.D. Cent. Code § 25-01.2-14 (Contents of individualized habilitation or education plan), all individuals receiving special education services must have an I.E.P. Components of an I.E.P. include long term goals, specifically stated intermediate objectives, evaluation procedures and schedules, initiation and duration of each service, and determination of whether guardianship is warranted. I.E.P.'s are developed by interdisciplinary teams and are renewed at least annually.

Individualized Habilitation Plan (I.H.P.) (DD) -

In accordance with N.D. Cent. Code § 25-01.2-14 (Contents of individualized habilitation or education plan), any institution, facility, agency or organization that provides services to people with developmental disabilities shall have a written I.H.P. (also referred to as an individualized program plan) developed and in effect for each person who has a developmental disability. Components of an I.H.P. include long term goals, specifically stated intermediate objectives, evaluation procedures and schedules, initiation and duration of each service, and determination of whether guardianship is warranted. I.H.P.'s are developed by interdisciplinary teams and are renewed at least annually.

Individualized Service Plan (I.S.P) (DD) -

Once a determination has been made that an individual is eligible for developmental disabilities services, an I.S.P. is developed. An I.S.P. authorizes entrance into developmental disabilities funded services. Components of an I.S.P. include the type of services/programs needed, the organization/agency to provide the service(s), and the initiation and duration of each service. I.S.P.'s are developed by I.S.P. teams and are renewed at least annually.

Individualized Service Plan Team (DD) -

An I.S.P. team is a group of people responsible for the development of an I.S.P. Members of the team include the individual requesting the service, his/her parent, guardian or

advocate as appropriate, representatives from developmental disabilities funded services, a developmental disabilities case manager and any other person deemed necessary.

Individualized Supported Living Arrangement (DD) -

A residential program for adults which emphasizes training in home management, independent living and recreation/leisure skills. Training is provided in an individual's own home rather than a group home.

Individualized Treatment Plan (I.T.P.) (MI) -

In accordance with Title II of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. No. 99-319, 100 Stat. 485 (codified at 42 U.S.C. §§ 9501, 10841 (1986)), persons admitted to a program or facility for the purpose of receiving mental health services have the right to a written I.T.P. Components of an I.T.P. may include the type of treatment/services, service initiation and duration, and objectives of treatment.

Interdisciplinary Team (DD) -

A team of individuals responsible for the development of an individualized habilitation plan. A team is comprised of the individual requesting services and representatives from DD agencies/organizations. In addition, the team may also include persons who have worked or will work closely with the individual, persons who have completed assessments, and the individual's family, guardian or advocate, as appropriate.

Intermediate Care Facility (A) -

An institution that provides health related services on a regular basis to individuals who do not require hospital or skilled nursing facility care, but whose mental or physical condition requires services that are above the level of room and board. Services are available only through institutional facilities.

Intermediate Care Facility for the Mentally Retarded (DD) -

A residential program (group home) for individuals with extensive needs which emphasizes training in home management, self care, activities of daily living and social skills. Twenty-four hour supervision is provided.

Long Term Care Ombudsman (A) -

In accordance with N.D. Cent. Code § 50-10.1-03 (duties of

state long-term care ombudsman), an advocate for residents of long term care facilities. Duties of the state long term care ombudsman include investigating and resolving complaints about administrative actions which have affected or may affect the health, safety, welfare or rights of a resident; and monitoring the development and implementation of federal, state and local laws, regulations and policies that relate to long term care. Duties of the state long term care ombudsman may be delegated to regional or volunteer community long term care ombudsmen.

Mental Health Association (MI) -

A private, non-profit organization which provides advocacy and information/educational services regarding mental health to consumers of the mental health system, families, professionals and the general public. Crisis intervention is provided through a statewide toll-free number.

Mental Health Division (MI) -

A division of the Department of Human Services whose services include implementation and coordination of services and prevention programs, consultation to public and private agencies and program/service development for the chronically, mentally ill. The division interacts closely with regional human service centers where case managers and extended care coordinators provide technical assistance and service coordination on the local level.

Mental Illness (MI) -

In accordance with N.D. Cent. Code § 25-03.1-02(9) (Definition of mentally ill person), a mentally ill person means an individual with an organic, mental or emotional disorder which substantially impairs the capacity to use self control, judgment, and discretion in the conduct of personal affairs and social relations.

Mental Retardation (DD) -

Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. The terms "mental retardation" and "developmental disability" are not synonymous.

Minimally Supervised Living Arrangement (DD) -

A residential program (group home or community complex) for adults whereby the individual rents a self contained unit. A resident advisor who lives in the complex provides on site support.

North Dakota State Hospital (MI) -

In accordance with N.D. Cent. Code § 25-02-03 (Object of state hospital), an institution for mental diseases serving specialized populations of people with mental illness including persons suffering from drug addiction and alcoholism. Services include all needed food, shelter, treatment and support that may tend to restore mental health or alleviate illness or suffering.

Partial Care (MI) -

Center based services provided to individuals to maintain and/or promote social, emotional and physical well-being through opportunities for socialization, therapy, work participation and other self enhancement activities. Services are provided through each of the eight regional human service centers.

Personal Care Attendant (A, DD) -

An individual who has received training in basic health, safety, and positioning, turning and transferring skills. PCA's may be hired by individuals who need assistance to remain living in their own home.

Protection & Advocacy Project (DD/MI) -

A state agency that advocates for the legal rights of people who have developmental disabilities and/or mental illness. Services provided include direct representation, protective service investigations of adults, information and referral, technical assistance, education and training, and citizen/self advocacy coordination. Branch offices serving people with developmental disabilities are located in each of eight regions of the state and the State Developmental Center at Grafton. Branch offices serving people with mental illness are located in Minot, Fargo, Jamestown, and Bismarck.

Psychosocial Clubs (MI) -

Centers located in each of the eight major cities in North Dakota. These centers, which are open during the day, eve-

ning and on weekends, assist individuals to learn appropriate socialization and leisure/recreational skills.

Regional Intervention Services (MI) -

Services designed to provide crisis intervention and immediate access to a range of housing, medical and counseling services within the community in order to reduce inappropriate use of the North Dakota State Hospital and to serve individuals in their home regions. Regional Intervention Services are currently operating at the human service center in Bismarck.

Related Services (DD, MI) -

In accordance with 34 C.F.R. § 300.13 (1981), related services means transportation and such developmental, corrective and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment, counseling services for diagnostic or evaluation purposes, school health services, social work services in schools and parent counseling and training.

Respite Care (A, DD) -

Care given by trained staff in order to temporarily relieve an individual's primary care giver from the stresses and demands that go along with constant care or emergencies. Services are available through Easter Seal Society of ND (DD) or County Social Services (elderly).

Representative Payee (A, DD, MI) -

A person designated by the Social Security Administration to receive monthly benefits on behalf of a beneficiary when such action appears to be in the beneficiary's best interest due to the beneficiary's inability to manage his/her own funds.

Service Providers (DD, MI) -

A term used to refer to local agencies and organizations with which the Department of Human Services contracts to provide services and programs to people with developmental disabilities and/or mental illness.

Skilled Nursing Facility (A) -

An institution which provides skilled nursing care and related services to patients who require post-hospital medical or nurs-

ing care or rehabilitation services. Services include nursing care, room and board, physical, occupational and speech therapy, and medications.

State Developmental Center (DD) -

An institution located at Grafton that may provide habilitative services to children with developmental disabilities who otherwise would not receive proper training and instruction in the public schools or adults with developmental disabilities who cannot be properly cared for in their homes or other available facilities.

Supported Employment Program (S.E.P.) (DD, MI) -

In accordance with 34 C.F.R. § 363.7 (1987), S.E.P. is defined as competitive work, in an integrated work setting, with on going support services for individuals with severe disabilities for whom competitive employment has not traditionally occurred, or has been interrupted or intermittent as a result of severe handicaps, or as transitional employment for individuals with chronic mental illness. Work that is performed must average at least 20 hours/week for each pay period. S.E.P. is operated by the office of Vocational Rehabilitation, Department of Human Services.

Supportive Apartment Living (MI) -

A service in which the regional human service center rents or leases apartments for individuals with severe mental illness who do not need 24-hour supervision, but who are not ready for total independence.

Transitional Community Living Facility (DD) -

A residential program (group home) for adults which emphasizes training in community integration, money management, and daily living skills. The purpose of training is to prepare individuals to reside in a more independent setting.

Transitional Employment (MI) -

A program that develops job opportunities for those clients at human service centers who have a psychiatric disability and are striving to become more productive and self-sufficient in the community.

Transitional Living Home (MI) -

A residential program for adults whereby room and board,

therapy, treatment, and training in activities of daily living is provided. Transitional living is utilized for periods of less than one year; 24-hour supervision is provided.

Vocational Rehabilitation (DD, MI) -

A program designed to develop, improve or restore the working usefulness of individuals with mental or physical disabilities which result in a substantial handicap to employment. Services assist individuals to become suitably employed consistent with their capabilities and abilities in the competitive labor market. There are eight regional offices located in the human service centers throughout the state.