

NATIONAL GUARDIANSHIP ASSOCIATION

POSITION STATEMENT ON ADEQUATE FUNDING FOR GUARDIANSHIP

OUR POSITION:

State and federal government should provide greater financial support for guardianship services.

THE CALL TO ACTION:

- The Federal government should allow the use of Medicaid dollars to fund guardianship services for Medicaid recipients, or at least restore the use of targeted case management and administrative claiming under rules which Medicaid recently revoked.
- State governments should add guardianship to the array of services allowed under their Medicaid State Plans.
- State governments have a further obligation to provide sufficient funding and access to guardianship for their indigent citizens who require it. Therefore, state funds should also be allocated for this important service to ensure adequate funding and staffing for the public program.

BACKGROUND INFORMATION ABOUT THE ISSUE

There is inconsistent and insufficient funding in this country to provide guardianship for adults with disabilities and for older adults who have no family and no resources. Demographics indicate that the number of those individuals is growing exponentially. Individuals who need a guardian may be denied medical treatment, and may not receive services that improve their health and quality of life. Conversely, individuals may receive unnecessary services, endure inappropriate hospitalizations or may be living in more restrictive settings than is required due to the inability to consent to alternatives. Those still living on their own may be open to abuse or exploitation. An adult who lacks decisional capacity deserves the protection and assistance of a guardian provided by public resources when there is no family support, and no assets are available from which to obtain that assistance.

- Targeted case management services for specific Medicaid beneficiary groups, have been seen as necessary supports to incapacitated Medicaid beneficiaries in procuring necessary medical and related services.
- States were authorized to approve Medicaid waivers to pay for approved services under Section 1915(g)(2) for "services which will assist individuals eligible under the [Medicaid] plan in gaining access to needed medical, social, educational, and other services." Some guardianship programs benefitted from being able to bill for identified case management services, although many routine guardianship tasks were not covered at all.

- Targeted case management services were severely curtailed by rules issued by the federal Center for Medical Services in March 2008, with guardianship services being explicitly eliminated. The rules were required by provisions in the 2005 Deficit Reduction Act, but the cuts appeared to exceed Congressional intent by requiring more costly forms of health care treatment without the beneficial effects of case management.
- Federal policy had also authorized the use of Medicaid administrative claiming matching funds generated in part by the provision of adult guardianship services. Authorized services, including some guardianship tasks relating to the procurement and review of health care services by guardians, were included in approved cost authorization plans. Such claims must have been found necessary to the administration of the state's Medicaid program and attributable to Medicaid eligible individuals.
- As was the case with targeted case management claims, federal support for Medicaid administrative claiming for guardianship services was eliminated.

RATIONALE:

- Informed Consent When an individual loses, or has never had the capacity to make decisions, often family members are available to step in, either through the use of advance directives or by becoming court appointed guardians. When there is no family, others may need to assist.
- Guardianship is a legal relationship that must be established before medical treatment is provided if the individual lacks the capacity to give that informed consent. In that sense it provides a medical service.
- Individuals who have no one to speak for them are at risk of being denied necessary treatment or services, or may be subject to treatment or services that are inappropriate or unwanted.
- When there is no guardian, decisions may be made by the service provider by default, or the service may not be provided at all. Guardians provide protection and oversight as a third party, with the ability to advocate for the person and with no conflict of interest such as a direct service provider would have.
- The presence of a guardian assists the state in lowering the costs of serving an indigent, incapacitated individual when preventive health care can be provided, and inappropriate hospitalization is avoided. Guardians can consent to less restrictive living arrangements, which are usually less costly. Guardians often assist the person with burial planning which helps reduce the need for indigent burial funds from the state.
- Federal health care policy had previously recognized the value of guardianship services in promoting personal autonomy and independence for incapacitated persons by allowing guardianship programs Medicaid reimbursement from two different Medicaid sources.

SUMMARY STATEMENT:

Based on the above, NGA reiterates the need for state and federal governments to provide greater financial support for quardianship services.