

Background:

The Committee will discuss two Executive Summaries for possible projects to implement State Plan Objectives:

- Support Network for Faith-Based Inclusion
- Stakeholder Training on Guardianship Alternatives

Behind this tab is the Executive Summary for Stakeholder Training on Guardianship Alternatives. The Executive Summary for a Support Network for Faith-Based Inclusion is not included in the binder materials but will be emailed to members prior to the meeting and included in the materials folder provided at the Council meeting.

If you have any questions or thoughts related to this Executive Summary, please contact Joanna Cordry, Planning Coordinator, at (512) 437-5410 or Joanna.Cordry@tcdd.texas.gov.

Project Development Committee

Agenda Item 7.

Expected Action:

The Committee will discuss the Executive Summaries and may recommend Council consideration of the proposed activities.

Council

Agenda Item 10. A-B.

Expected Action:

The Council will consider recommendations from the Project Development Committee.

Executive Summary

Stakeholder Training on Guardianship Alternatives

Project Goal

Partner with stakeholders and subject matter experts to develop and provide training to promote the informed use of alternatives to guardianship that assist individuals to make their own decisions, maintain civil rights, and reduce the need for guardianships.

The proposed project would address State Plan Objective 5.5: Beginning in FY 2014, develop opportunities to partner with people who have developmental disabilities, families, providers, medical schools, licensing and certification boards, agencies, and/or community-based organizations to provide or develop training and/or practice guidelines that include knowledge related to disability and incorporate components of successful TCDD projects.

Proposed Funding Amount

Up to \$40,000 per year.

Proposed Duration

Up to three years.

Background

The vast majority of people with disabilities, including those with Intellectual and Developmental Disabilities (I/DD), can make important decisions when they receive necessary supports and services without needing a guardian. Because a guardianship can result in a person losing all rights to manage their own finances, vote, get married, enter into contracts, or make medical decisions for themselves, guardianships are usually believed to be a last resort. State law in Texas directs courts to encourage the maximum self-reliance and independence. However, attorneys, judges, providers, and parents do not necessarily have knowledge or appreciation of alternatives to guardianship that may prevent a person from losing all rights. Also, the broad definition of incapacity in the Texas Estates Code has a discriminatory impact on people with I/DD by enabling a court to appoint a guardian if an adult has a physical or mental condition and is substantially unable to provide food, clothing, or shelter; to care for their physical health; or to manage their own financial affairs.

Information about individuals under guardianship is not easily available. The State of Texas' Office of Court Administration (OCA) writes in a 2014 report, "As in many other states, case-level data about guardianship proceedings in Texas is incomplete for the purpose of state-level and statewide analysis."ⁱ It appears the number of people under guardianship in Texas is considered a "best guess" because some courts are not reporting as expected. Texas has only recently initiated data collection to determine how many individuals under guardianship are people with disabilities, and it does not appear that reliable data is available to allow TCDD to determine if there are other groups that may be disproportionately impacted by guardianship laws or processes.

The Texas Council for Developmental Disabilities' (TCDD) involvement in guardianship-related issues has included collaboration with other advocate groups to examine guardianship laws, advocacy to improve laws and practices, and development of projects to demonstrate alternatives to guardianship.

In 2009, TCDD staff and other advocates provided assistance to members of the 81st Texas Legislature to draft House Bill (HB) 1454 that incorporated some of the components of past TCDD Peer to Peer Support projects. HB 1454 directed the Health and Human Services Commission (HHSC) to create a volunteer-supported decision-making advocate pilot program for people with I/DD or other cognitive disabilities who live in a community setting. The goal of the pilot was to demonstrate an alternative to guardianship that does not impede self-determination. HHSC directed the Department of Aging and Disability Services (DADS) to implement the pilot and prepare the report for the legislature.

In 2011, TCDD provided a three year grant to the Arc of San Angelo to establish a pilot to develop a trained pool of volunteers willing to support individuals with intellectual, developmental, and/or other disabilities in making their own decisions as an alternative to guardianship and to provide DADS with information to prepare their report to the legislature. The project identified legal, procedural and cultural barriers preventing volunteers from supporting decision-making of individuals with developmental disabilities. The project also found other states promoted alternatives to guardianship that were not available in Texas policy and practice.

At the same time that TCDD's project was piloting one alternative to guardianship, TCDD staff were also collaborating with other advocates in two separate policy-related initiatives to develop recommendations for guardianship reform.

The first initiative, the "Texas Working Interdisciplinary Network of Guardianship Stakeholders" (WINGS), was created using an incentive grant awarded by the National Guardianship Network to the Texas Office of Court Administration (OCA). WINGS had broad representation from a range of stakeholders: probate judges; attorneys; physicians; guardian providers; elder advocates and professionals; and disability advocates, including TCDD. WINGS was charged to identify strengths and weaknesses in the state's current system of adult guardianship and less restrictive decision-making options; address key policy and practice issues; engage in outreach, education and training; and serve as an ongoing problem-solving mechanism to enhance the quality of care and quality of life of adults in, or potentially in, the guardianship and alternatives systems.

The second initiative in which TCDD has been actively involved is the Guardianship Reform and Supported Decision-Making (GRSDM) workgroup. GRSDM is an ad hoc group of organizations; individuals with physical, mental, intellectual and developmental disabilities; seniors; social workers; and representatives from the legal community. The GRSDM collaboration developed seven policy proposals to support increased opportunities for people with disabilities and elders to make important decisions without the need for a guardianship by making changes in the Texas Estates Code. The proposals are related to:

- change of the impersonal term "ward" to "person under guardianship";
- development of a bill of rights that individuals under guardianship would be able to keep;

- required consideration of less restrictive alternatives prior to a guardianship decision;
- improved protections for individuals in institutions by setting certain duties of guardians;
- consideration of supports to assist people to meet their needs and avoid or limit guardianship;
- supported decision-making agreements as an informal alternative to guardianship; and
- inclusion of a provision to allow a person under guardianship to make decisions about residence.

These seven proposals were reviewed by the OCA, which appreciated the necessity of expanding the work to be inclusive of people with developmental disabilities and agreed the seven proposals are needed reforms.

TCDD and other advocates expect significant changes to the Estates Code to be proposed during the 84th Texas Legislative Session. If passed, these bills will clarify the preference for less restrictive alternatives to guardianship, define and promote the use of supported decision-making agreements, and alter the duties of both attorneys ad litem and guardians. Attorneys, judges, people with disabilities, and their caregivers will likely need additional training on any new legislation. This creates an opportunity for TCDD to collaborate with others to develop training materials that include information on changes to Texas Estates Code, current alternatives to guardianship, and self-determination.

Project Description

The grantee or contractor will work with TCDD staff and other stakeholders (including individuals with developmental disabilities, family members of people with developmental disabilities, relevant licensing and certification boards, and community-based organizations) to:

1. Develop outreach plans for target audience groups, to include probate and county court judges, probate attorneys, and individuals with disabilities and family/supporters.
2. Develop training materials tailored to each audience group and including information about alternatives to guardianship, including:
 - a. Limited guardianships
 - b. Medical Power of Attorney – Chapter 166, Health and Safety Code
 - c. Durable Power of Attorney – Section 751.002, Estates Code
 - d. Declaration for Mental Health Treatment – Chapter 137, Civil Practice and Remedies Code
 - e. HIPPA releases
 - f. Financial management relationships
 - g. Supported decision-making agreements
3. Ensure that training includes changes from the 84th Texas Legislature.
4. Apply to the State Bar of Texas to be able to provide continuing legal education (CLE) accreditation for attorneys.
5. Submit presentation proposals for current professional development conferences for judges and attorneys.
 - a. For probate court judges, county court at law judges and constitutional county court judges, presentation proposals are expected to be submitted to:
 - i. The Texas College of Probate Judges

- ii. The Texas Judicial Academy
 - iii. Other annual and/or regional training conferences for county court at law judges
- b. For attorneys, presentation proposals are expected to be submitted to:
 - i. The Poverty Law Section of the State Bar of Texas for inclusion in the annual Poverty Law Conference and or in web-based presentations
 - ii. The Real Estate, Probate and Trust section of the State Bar
- 6. Submit presentation proposals to annual conferences hosted by stakeholder groups, such as the Texas Council for Community Centers, the Texas Council of Administrators of Special Education, the Texas Guardianship Association and advocacy organizations like the Arc of Texas, Texas Advocates, Texas Parent to Parent, and National Alliance on Mental Illness.
- 7. Identify other local training partners, schedule trainings, reserve venues, and raise awareness of training opportunities among target audience groups. For provision of training to individuals with disabilities and family members, possible partners to be considered should include: Local Authorities, Regional Education Service Centers, the Arc of Texas, Texas Advocates and Centers for Independent Living.
- 8. Provide training to the target audience groups and collect information to evaluate the effectiveness and usefulness of the training.
- 9. Report to TCDD on progress at least quarterly, and provide information on the number of people trained, the demographics of those trained, and the results of the training evaluations.
- 10. Provide TCDD with information and recommendations about further policy actions and future projects.

Other Considerations

1. The need for this project was identified by TCDD staff in collaboration with the other members of the GRSDM workgroup who advocated for the guardianship reforms to be included in the proposed legislation. Members of the GRSDM provided significant input into the activities described in this Executive Summary. TCDD expects that this workgroup will continue to be involved in the implementation of the activities (along with other stakeholders) and that an organization or organizations that is/are a member of this workgroup may apply to oversee implementation of the project. Funds for the project activity will be awarded through a competitive process, and all organizations interested in applying will receive the same amount of information from TCDD regarding the project and guardianship reform.
2. Because of the large number of people with disabilities, family members, and others located around the state who would benefit from training on alternatives to guardianship, TCDD may consider funding an additional project to develop and conduct training for individuals with disabilities and family members, using the information gained and lessons learned from the activities described here. TCDD staff anticipate such a project would require a larger funding amount and a longer duration.

ⁱ *Texas Guardianship Cases: Improving Court Processes and Monitoring Practices in Texas Courts*, Texas Office of Court Administration, November 2014.

http://www.txcourts.gov/media/701080/GUARDIANSHIP-STUDY_11-12-14-Final.pdf