

AIC Special -

Walsh

PRESENTATION BY GERALD F. WALSH, EXECUTIVE DIRECTOR,  
MINNESOTA ASSOCIATION FOR RETARDED CHILDREN, INC.,  
AT THE 1964 STATE CONVENTION OF THE ILLINOIS COUNCIL  
FOR RETARDED CHILDREN HELD IN SPRINGFIELD, ILLINOIS,  
MAY 16, 1964.

" STATE PARTICIPATION IN LIFETIME PLANNING FOR THE RETARDED "

I have been invited to share with you ideas on the subject of "State Participation in Lifetime Planning for the Retarded". I am sure the reason I have been asked is that we do, in Minnesota, have a law which does result in state involvement in lifetime planning and supervision of about 11,500 mentally retarded children and adults.

It is not my intention to tell you that ours is the only way of doing this, or the only possible plan, or that ours is the best way. Recent studies by our Minnesota Association for Retarded Children show that many improvements are possible and probably needed.

The Minnesota guardianship law was adopted in 1917. It was part of a children's code recommended for passage by the Governor at that time. Dr. Arthur Rogers, who was then superintendent of our Faribault State School and Hospital, Minnesota's first institution for the retarded, had been insisting for a number of years on the need for a guardianship law and also on the need for supervision in the community for those who might return to it after training had been completed. Prior to the passage of our guardianship law, the retarded were committed directly to the custody of the institution superintendent.

The President's Panel on Mental Retardation had a special Task Force on Law as it affects the mentally retarded. This Task Force report had the following to say: "Retarded children, like normal children, usually enjoy the natural guardianship exercised by parents, but where legal guardianship of any kind is required it should be carefully adapted to the specific requirements of the case."

Of course, when we talk about guardianship, we are talking about supervision, because this is the major function of a guardian.

There needs to be a plan in each state for supervision through a state agency for those who need this kind of service on a lifetime basis.

The important fact in Minnesota is that we do have a method which gives reasonable assurance that the retarded can have lifetime supervision if desired and necessary. For those who retardation is such that they are placed in an institution, for those for whom it is thought such care may be necessary, and for those who demonstrate by their functioning that they will need long-time supervision, there must be an agency to provide long-time planning and supervision.

I would like to quote at this time from our Minnesota law -- this is probably the main portion of it: "Upon commitment of a mentally deficient or epileptic patient, the director may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state, outside of any institution, through any child welfare board or other appropriate agency thereto authorized by the director".

There is also a provision in the law for release from guardianship if the person is found to be capable of conducting his own affairs and the law says that when it appears to the director that a person committed to his guardianship is no longer in need of such guardianship, he may petition the court of commitment or the court to which the venue has been transferred, for his discharge as guardian. This

is the provision for the Commissioner of Welfare to petition for release of guardianship, but the ward himself, or someone representing him, may petition for restoration to capacity. The law says that any reputable person or director may petition the court of commitment or the court to which the venue has been transferred, for restoration to capacity of a patient. Then, upon proof that a patient is not mentally deficient, the court shall order him restored to capacity at the expiration of 30 days from the date of such order.

As we know, in most cases the retarded will outlive their parents. Someone else must be given supervisory responsibility and planning responsibility for them.

The basis of our Minnesota plan is the law that I mentioned passed in 1917, which makes it possible for Probate Court action to place a retarded person under the personal guardianship of the State Commissioner of Public Welfare. Parents and others can petition to the Probate Court of the county of residence for this state guardianship. The retarded person is examined by a panel of doctors and, if declared incompetent, is placed under the guardianship of the Commissioner of Welfare. Responsibility for supervision of the retarded person is assigned by the Commissioner of Welfare to the county welfare board of residence. We have in Minnesota 87 county welfare boards who act under the direction of and cooperate with the Commissioner of Welfare. The supervision given by these county welfare boards can vary greatly, depending on the needs of the retarded person. In Minnesota, cases are given priority and either given intensive case-work or only an occasional necessary case review.

In many cases, the retarded person continues to live at home with his parents. Actually, as I said earlier, we have 11,500 retarded in Minnesota who are under guardianship of the Commissioner; of these, 6,400 are in state institutions. Some of the 11,500 are people who have been released from institutions and are now receiving supervision from county welfare offices.

In situations where it is not possible for the retarded person to live at home, the county welfare office makes alternate arrangements. This may be a foster home, a group home, or private institution, and, of course, it may also be a state institution. In our state, the counties are becoming increasingly willing to pay all or part of the cost of community care for the mentally retarded. For instance, if a child is placed in a foster or boarding home and the parents cannot pay the cost, the county will pay all or part of it. Likewise, in some counties the county will pay the total cost of day care services for wards. In Hennepin County, they pay \$102 a month for such care in a day activity center. In other instances, counties are supporting day activity centers for the mentally retarded.

One point that I want to make in regard to the above is that a social worker is assigned and responsible for each case of a retarded person who is placed under guardianship.

I think there are a number of advantages to our program and the way it functions. First, there is a permanent guardianship which can be planned and arranged for while parents are still alive. They have the assurance that, if they both die at once or when they die, the state and the county will continue to give supervision. While the parents are still alive, the responsibility is shared between the parents, the county, and the state. Although the Commissioner is given absolute personal guardianship, the parents are involved and their former rights as parents are respected as long as they do not adversely affect the care of the retarded person. For instance, parents are asked permission if operations are to be performed. Secondly, the county and state welfare offices are involved early and learn the needs of the retarded person. The county welfare office is involved prior to the petition to the probate court for guardianship. They work with the parents, they prepare material for presentation to the probate court. Once, then,

the person is placed under guardianship, they do, as I said before, give supervision or whatever service is possible or necessary. Third, I think it is important to realize that in the event of an emergency, fast and wise action is possible because the records are up-to-date; a county welfare office is familiar with the retarded person and his needs. Fourth, it is an advantage that there is a single agency which is responsible for review and adjustment of plans.

To mention a few things that probably could be changed in our Minnesota plan -- One, the Commissioner of Welfare serves as guardian but he is also the caretaker, so to speak, in that he operates the institutions in Minnesota for the retarded. If, as guardian, he has complaints about the care of his wards, he must complain to himself. I feel it would be advisable to have a separation of these two functions. Two, the guardianship law provides that the court "may", in addition to two doctors of medicine, appoint a person skilled in determining mental deficiency to assist the court in arriving at its decision. We feel that this should be a mandatory function and that the entire evaluation system for commitment procedures should be extended and improved. There are other changes which we would feel useful, also.

In Minnesota, we feel that we have a wedding of a number of circumstances that has resulted in a good system. 1) The guardianship law; 2) the 87 county welfare offices that can give supervision; 3) the personnel who are interested in seeing that supervision is given and people who have recognized this as a responsibility of the state.

The President's Panel Report of the Task Force on Prevention, Clinical Services, and Residential Care states that movement of a patient from one level to another, both up and down, with time as circumstances change, is essential. If possible, one professional person should remain responsible for the same patient in or out of a residential facility. Planning for patients after the death of parents requires such a responsibility in part be given to those outside the home. The free flow of patients described requires an organizational structure in which residential and non-residential services are an integrated whole.