**IAC Proposed Legislative Resolution #2024-
June 7, 2023
Twin Falls County**

**Title:** Adult Guardianship for Incapacitated Adults

**Sponsor:** Twin Falls County

 **Statutes Affected:** Title 15, Uniform Probate Code, Chapter 5, Protections of Persons Under Disability and Their Property
 **County Office or Departments Affected:** The Idaho Department of Health and Welfare, The Office on Aging, Adult Protective Services, First Responder Team, County and City Governments

**Issue/Problem:** Guardianship services for incapacitated adults within the State of Idaho are inadequate due to lack of funding, policy, and process.

**Background & Data:** Because some counties are refusing guardianship referrals, there is no accurate number of community members in need. Twin Falls County documented 6 referrals in 2018, 5 referrals in 2019, 5 referrals in 2020, and 5 referrals in 2021. A Hospital in Bingham County stated that they make referrals for guardianship at least once a year. Other counties have stated that they could ’double their caseload tomorrow’ if they were simply given more funding and staff. The existence of Title 15, Uniform Probate Code, Chapter 5, Protections of Persons Under Disability and Their Property, Part 6. Boards of Community Guardian proves in and of itself that there is a need for guardianship of incapacitated adults in Idaho communities.

**Proposed Policy:** A specialized court system for determining guardianship. Increased funding for adult guardianship services through an annual allowance of 5% of The State of Idaho’s Department of Health and Welfare budget to be distributed to all Idaho counties annually in amounts determined by need.

**Arguments & Entities in Support:** According to Title 15 of Idaho Statutes, counties may assemble their own board of guardians under the discretion of the county commissioners. As the statute reads currently, counties are not required to have a board of guardians at all. This creates inequality between Idaho residents living in counties that may or may not have a board of guardians. There are further discrepancies between counties that are unable to distribute adequate funds to their Board of Guardians program and counties that do not fund their program at all which could eventually result in increased cost through Medicaid.
Most Board of Guardian volunteers serve limited terms resulting in further inconsistencies in care for incapacitated adults who receive guardianship services. The inconsistency of community volunteers paired with insufficient funding has resulted in some counties simply refusing referrals for guardianship at all. This refusal of responsibility is not only harmful to our vulnerable community members, but it also affects nurses, doctors, social workers, mental health professionals, nurse aids, elected officials, court officials, law enforcement, emergency responders, community shelters, crisis centers, public spaces, neighborhoods, and businesses across Idaho.

**Arguments & Entities Against:** Title 15 of Idaho Statutes enables counties to set up a board of guardians in a way that serves the unique needs of their community and the framework of how to do so legally. The fact that the Board of Guardians is volunteer ensures that the community is enabled to choose not to fund programs that could seem unnecessary to community members. Choosing not to fund an excessive number of county programs could be contributing to a lower local tax rate. Additionally, patients are needed to employ healthcare facility staff. And finally, community activism and local volunteering helps build the trust and relationships essential to Idaho communities and their values.

**Feasibility:** The demonstrated ability of numerous Idaho counties to maintain a board of guardians on such a small budget and volunteer hours, proves that any increase in funding or resemblance of structure can only produce favorable outcomes for vulnerable community members. Some counties have even assembled their own Board of Guardians unaffiliated with the county at all, proving that the task is more than feasible for an entity like The State of Idaho.

**Other Stakeholders Affected and Nature of Impact:** The issue of Guardianship for Incapacitated Adults impacts all Idaho residents in one way or another. Idaho healthcare staff and facilities are impacted by being unable to provide health services to incapacitated adults without a legal guardian’s consent. Community shelters and crisis centers and their staff because of the incapacitated adults who seek their services or are dropped off at their facilities. Local elected officials and government employees because of their ethical responsibilities to the community members they serve and represent. Emergency response teams because of the nature of services they provide and their ethical responsibilities to protect and serve the community. Civil court systems, including but not limited to magistrates, clerks, and attorneys because there is no specialized court for incapacitated individuals in need of guardianship. Entities and individuals who provide social services such as The Department of Health and Welfare, mental health professionals, The Office on Aging, and Adult Protective Services because of the legal and ethical responsibilities they have to their community.

**Fiscal impact:** The demonstrated ability of numerous Idaho counties to maintain a board of guardians on such a small budget and volunteer hours, proves that any increase in funding or resemblance of structure can only produce favorable outcomes for vulnerable community members. Ultimately, by The State of Idaho applying a ‘pooled resources’ framework resources could be used more efficiently, meeting the maximum amount of need possible. Which would in turn cost the state less and prevent scarcity of community resources in the future.