

Timothy M. Keller
State Auditor



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Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

VIA EMAIL

September 21, 2017

Amira Rasheed, Chair
John Block, III, Executive Director
Developmental Disabilities Planning Council
625 Silver Avenue SW, Suite 100
Albuquerque, New Mexico 87102

Emergency Risk Advisory

Dear Ms. Rasheed and Mr. Block:

The Office of the State Auditor (OSA) received concerns regarding the oversight responsibilities of the Development Disabilities Planning Council (DDPC) Office of Guardianship. These concerns arose after the U.S. Attorney indicted the co-founders of a contract guardianship company, Ayudando Guardians (Ayudando), on charges of embezzlement. In response to these concerns, the OSA worked with the DDPC annual auditor to perform initial fact-finding procedures regarding the adequacy of the Office of Guardianship's internal controls. As a result, the OSA is issuing this Emergency Risk Advisory. The OSA stands ready to work with all stakeholders to ensure that the most vulnerable New Mexicans are not subject to more fraud, waste and abuse as the courts work to reassign Ayudando's clients.

In 2003, the New Mexico Legislature transferred the Office of Guardianship from the Office of the Attorney General to the DDPC. Section 28-16B-2, NMSA 1978. The Office of Guardianship is required to "contract for the provision of probate guardianship services to income-eligible incapacitated persons, including temporary guardianship" and to "establish procedures for the investigation and resolution of complaints against contractors." Section 28-16B-3, NMSA 1978. In addition, the Office of Guardianship is responsible for monitoring and enforcing all guardianship contracts. Section 28-16B-4, NMSA 1978.

The OSA asked the independent public accounting firm of Axiom Certified Public Accountants and Business Advisors, LLC, to assist in initial fact-finding regarding whether the Office of Guardianship is fulfilling its statutory mandate. The audit firm is also completing additional procedures, the results of which will be made public when the annual audit is complete.

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The OSA's initial fact-finding revealed a widespread failure of the Office of Guardianship to oversee contract guardians. In short, although the courts and our citizens rely on the Office of Guardianship to protect against fraud and abuse by contract guardians, the Office has few systems in place or resources to discharge that duty. The Office of Guardianship did not have formal approved policies for contract guardians during Fiscal Year 2017 (FY17, which spanned from July 1, 2016 to June 30, 2017). The Office monitored only two guardianship contracts during FY17, out of a total of 21. The Office did not address complaints about contract guardians. Required periodic reporting by contract guardians was irregular, and the Office of Guardianship did not follow up with non-reporters. Without these basic systems in place, the Office could not have been monitoring the accuracy of billing or identifying early signs of the types of fraud and abuse that led to the Ayudando indictments. The DDPC suggests that a severe lack of resources and capabilities are contributing to the problems at the Office of Guardianship. Monitoring efforts have been hampered by a lack of adequate staffing, expertise and travel budget.

The OSA recommends that the Office of Guardianship immediately be subject to more thorough oversight and management. This may necessitate bringing in staff on loan from other agencies or a contracted firm to assist with the Office of Guardianship's day-to-day work and to addresses of the backlog of unresolved complaints and irregular reporting. It may also require additional funding on an emergency basis or through transfer from other DDPC operations. As part of the fall interim process and the upcoming legislative session, the New Mexico Legislature and the Governor of New Mexico should include possible enhancement, revision or restructuring of the Office of Guardianship and its responsibilities with respect to this issue. This should include evaluating whether the DDPC is the appropriate agency to house the Office of Guardianship.

In order to ensure that the appropriate authorities are alerted to these risks, the OSA is addressing this letter to both the Executive Director and the Chair of the DDPC, which oversees the Office of Guardianship. In addition, we are sending a copy of this letter to the Department of Finance and Administration, which has fiscal oversight over all state agencies; the Guardianship Study Commission created by the New Mexico Supreme Court; the Office of the Attorney General, which oversees charitable organizations and has received complaints related to the state's guardianship system; and the Second Judicial District Court, which has undertaken the largest effort to reassign Ayudando's clients to other guardianship firms.

The contracts between the guardianship firms and the Office of Guardianship contain language that gives the OSA the right to inspect "detailed time and expenditure records that indicate the date, time, nature and cost of services rendered" by those firms. Depending on the final results of the audit firm's work, the OSA may exercise this right with respect to specific guardianship firms. We welcome information on any guardianship firms about which the oversight agencies have concerns.

We appreciate your attention to these urgent matters and commend DDPC's prompt and candid responses to our inquiries. New Mexicans rely on the Office of Guardianship to protect the resources and provide care for our most vulnerable citizens. Bringing order and action to this

agency should be a top priority for all of the agencies working on the guardianship challenges our state faces. We look forward to collaborating on the next steps.

Sincerely,

A handwritten signature in cursive script that reads "Timothy M. Keller". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Timothy M. Keller
State Auditor

cc: Hon. Hector Balderas, Attorney General
Sen. Mary Kay Papen, President Pro Tempore
Rep. Brian Egolf, Speaker of the House
Rep. Deborah A. Armstrong, Chair, Legislative Health & Human Services Committee
Hon. Nan Nash, Chief Judge, Second Judicial District Court
Duffy Rodriguez, Secretary, Department of Finance and Administration
Hon. Wendy York (ret.), Guardianship Study Commission
David Abbey, Director, Legislative Finance Committee