

105TH CONGRESS
1ST SESSION

S. 655

To amend title XIX of the Social Security Act to require States to adopt and enforce certain guardianship laws providing protection and rights to wards and individuals subject to guardianship proceedings as a condition of eligibility for receiving funds under the medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 1997

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to require States to adopt and enforce certain guardianship laws providing protection and rights to wards and individuals subject to guardianship proceedings as a condition of eligibility for receiving funds under the medicaid program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guardianship Rights
5 and Responsibilities Act of 1997”.

1 **SEC. 2. GUARDIANSHIP REQUIREMENTS FOR STATE MEDIC-**
 2 **AID PLANS.**

3 (a) GUARDIANSHIP REQUIREMENTS AS CONDITION
 4 OF ELIGIBILITY.—Section 1902(a) of the Social Security
 5 Act (42 U.S.C. 1396a(a)) is amended—

6 (1) in paragraph (62), by striking “and” at the
 7 end;

8 (2) in paragraph (63), by striking the period
 9 and inserting “; and”; and

10 (3) by inserting after paragraph (63) the fol-
 11 lowing new paragraph:

12 “(64) not later than 2 years after the date of
 13 enactment of this paragraph, provide assurances
 14 that the State has adopted, and assumed responsibil-
 15 ity for enforcing, laws relating to guardianship
 16 which meet the requirements of section 1932.”.

17 (b) REDUCTION OF PAYMENTS TO STATES FOR FAIL-
 18 URE TO ADOPT AND ENFORCE CERTAIN LAWS RELATING
 19 TO GUARDIANSHIP.—Section 1903 of the Social Security
 20 Act (42 U.S.C. 1396b) is amended by adding at the end
 21 the following:

22 “(x)(1) In order to receive payments under para-
 23 graphs (2)(A) and (7) of subsection (a) without being sub-
 24 ject to the reductions set forth in paragraph (2) of this
 25 subsection, a State shall adopt and assume responsibility
 26 for enforcing, laws relating to guardianship which meet

1 the requirements of section 1932 on or before the expira-
2 tion of the 2-year period beginning on the date of enact-
3 ment of this subsection.

4 “(2)(A) Subject to subparagraph (B), if a State fails
5 to meet the deadline established under paragraph (1), the
6 percentages specified in paragraphs (2)(A) and (7) of sub-
7 section (a) with respect to that State shall each be re-
8 duced—

9 “(i) for the first 2 quarters beginning on or
10 after such deadline, 5 percentage points; and

11 “(ii) thereafter, for any period consisting of 2
12 consecutive quarters during which the Secretary de-
13 termines that the State fails to meet the require-
14 ments of paragraph (1), 5 additional percentage
15 points.

16 “(B) With respect to the percentages specified in
17 paragraphs (2)(A) and (7) of subsection (a)—

18 “(i) such percentages shall not be reduced more
19 than 25 percentage points by reason of subpara-
20 graph (A); and

21 “(ii) no reduction shall be made under subpara-
22 graph (A) for any quarter following the quarter dur-
23 ing which a State satisfies the requirements of para-
24 graph (1).”.

1 (c) DESCRIPTION OF REQUIREMENTS.—Title XIX of
 2 the Social Security Act (42 U.S.C. 1396 et seq.) is
 3 amended—

4 (1) by redesignating section 1932 as section
 5 1933; and

6 (2) by inserting after section 1931 the following
 7 new section:

8 **“SEC. 1932. REQUIREMENTS FOR STATE GUARDIANSHIP**
 9 **LAWS.**

10 “(a) IN GENERAL.—For purposes of sections
 11 1902(a)(64) and 1903(x), a State has adopted laws relat-
 12 ing to guardianship which meet the requirements of this
 13 section if the State has adopted laws (or issued regula-
 14 tions) which—

15 “(1) include the rights, standards, and duties
 16 described in subsections (b) through (l); or

17 “(2) protect individuals in the State as effec-
 18 tively as laws (or regulations) which include the
 19 rights, standards, and duties described in such sub-
 20 sections (as determined by the Secretary).

21 “(b) RIGHTS OF INDIVIDUALS SUBJECT TO GUARD-
 22 IANSHIP PETITIONS.—The laws of the State shall provide
 23 that—

24 “(1) each individual in the State who is the
 25 subject of a guardianship petition shall be provided

1 with an adequate and timely notice, in large print
2 and plain language, of all pending guardianship pro-
3 ceedings, including a copy of the guardianship peti-
4 tion, a clear description of such proceedings and of
5 all rights afforded such individual in the course of
6 such proceedings, and a summary of the possible
7 consequences of a determination of incapacity (or, in
8 the case of a blind or illiterate individual, an oral de-
9 scription of such rights and information);

10 “(2) a copy of the notice provided under para-
11 graph (1) shall be provided to the individual filing
12 a guardianship petition and to the nonfiling spouse,
13 child, sibling, nearest relative, or custodian of the
14 individual who is the subject of such guardianship
15 petition;

16 “(3) each individual in the State who is the
17 subject of a guardianship petition has the right to
18 counsel who will act as an advocate for such individ-
19 ual with respect to such petition unless such individ-
20 ual knowingly and voluntarily waives such right, and
21 the court shall appoint counsel for such individual at
22 public expense if such individual is indigent or if
23 such individual lacks the capacity to waive the right
24 to counsel;

1 “(4) each individual in the State who is the
 2 subject of a guardianship petition has the right to
 3 have the question of incapacity heard by a jury upon
 4 request; and

5 “(5) each individual in the State against whom
 6 a determination of incapacity and guardianship
 7 order is issued may file an appeal contesting such
 8 determination and order in the appropriate court of
 9 appeal not later than 30 days after such determina-
 10 tion and order is issued, and may at any time peti-
 11 tion the court issuing such determination and order
 12 to modify or dismiss such determination or order.

13 “(c) STANDARDS FOR DETERMINATIONS OF INCA-
 14 PACITY.—The laws of the State shall provide that no de-
 15 termination of incapacity shall be made at a guardianship
 16 hearing—

17 “(1) unless—

18 “(A) the individual who is the subject of
 19 the guardianship petition is present at such
 20 hearing; or

21 “(B) the court determines, on the basis of
 22 information provided by a physician, social
 23 worker, or other person trained to work with
 24 the elderly, the developmentally disabled, or the
 25 mentally retarded (whichever is appropriate in

1 the case of a particular individual), that such
 2 individual has knowingly and voluntarily waived
 3 the right to be present at the hearing or cannot
 4 be present because of physical incapacity; and

5 “(2) on the basis of the age of the individual
 6 who is the subject of the guardianship petition but
 7 shall instead be made on the basis of clear and con-
 8 vincing evidence that such individual is incapable of
 9 administering the individual’s own affairs.

10 “(d) STANDARDS FOR PERSONNEL INVOLVED IN
 11 GUARDIANSHIP HEARINGS; SCHEDULE OF HEARINGS.—
 12 The laws of the State shall provide that court personnel
 13 in the State involved in guardianship hearings shall—

14 “(1) be trained to work with the elderly, the de-
 15 velopmentally disabled, and the mentally retarded;

16 “(2) be briefed on general issues facing the in-
 17 dividuals described in paragraph (1);

18 “(3) provide necessary visual aids, interpreters,
 19 and other devices in order to assist the individuals
 20 described in paragraph (1) during guardianship
 21 hearings; and

22 “(4) make reasonable efforts to schedule each
 23 guardianship hearing at a time and location conven-
 24 ient for the individual who is the subject of the
 25 guardianship petition.

“(e) EFFECT OF DETERMINATION OF INCAPACITY.—The laws of the State shall provide that a determination of incapacity in a guardianship hearing in the State shall not be considered prima facie evidence that the individual in question is insane or is unable to function in a non-institutionalized setting.

“(f) RIGHTS OF WARDS.—The laws of the State shall provide that—

“(1) each ward in the State shall, when feasible, have the personal preferences of such ward taken into account by the court in the appointment of a guardian; and

“(2) during the period of guardianship, each ward in the State shall be entitled to participate in all decisions affecting such ward to the maximum extent possible commensurate with such ward’s functional limitations, and shall retain all rights not ordered by the court to be transferred to the guardian.

“(g) STANDARDS FOR GUARDIANSHIPS.—The laws of the State shall provide that each guardianship imposed in the State shall be imposed on the ward in the least restrictive manner commensurate with the ward’s functional limitations.

“(h) STANDARDS FOR APPOINTMENT OF GUARDIANS.—The laws of the State shall provide that—

“(1) no individual may be appointed to serve as a guardian in the State unless the individual certifies that such individual has completed, or agrees to enroll in and complete, a program of court-supervised training in the legal, economic, and psychosocial needs of wards, based upon standards developed by the chief executive officer of the State;

“(2) a guardian shall be removed from the guardian’s position if the court determines that the guardian has failed to complete a training program described in paragraph (1);

“(3) no individual who has been convicted of a felony may be appointed to serve as a guardian in the State unless the court determines that an exception to such prohibition is appropriate in a particular case; and

“(4) no individual may be appointed to serve as a guardian in the State unless such individual has filed, and the court conducting the guardianship hearing has approved, a guardianship plan which includes—

“(A) a description of the ward’s proposed living arrangements;

“(B) a plan for meeting the ward’s financial, medical, and other remedial needs; and

“(C) provisions for maintaining contact between the ward and the ward’s family and friends.

“(i) DUTIES OF GUARDIANS.—The laws of the State shall provide that—

“(1) each guardian in the State shall file an annual report with the court which issued the order giving such guardian control over the ward’s affairs which includes—

“(A) a description of the management of the ward’s finances during the previous year;

“(B) a physician’s report on the health and physical well-being of the ward; and

“(C) a recommendation as to whether the guardianship should be continued, modified, or terminated;

“(2) each guardian in the State may use funds from the estate of the ward over whose affairs the guardian has control only for the administration of the guardianship and the benefit of the ward, and shall repay to the ward’s estate any funds used by such guardian for any purpose determined to be improper by

the court which issued the order giving such guardian control over such ward's affairs; and

“(3) each guardian in the State shall keep the court which issued the order giving such guardian control over the ward's affairs informed of the whereabouts of such ward, and shall notify such court whenever such ward is moved to a new residence.

“(j) STANDARDS REGARDING WARDS MOVING TO AND FROM STATE.—The laws of the State shall provide that—

“(1) if the court which issued a guardianship order receives notice pursuant to subsection (i)(3) that a ward has been moved to a new residence in another State, the court shall notify the appropriate court in that State of the existence of the guardianship and shall provide that court with necessary files and background information on the guardianship; and

“(2) upon receiving notice from a court in another State that a ward subject to a guardianship order has been moved into the State, a court in the State shall assume jurisdiction over such guardianship, and may require the guardian to submit a new petition for guardianship or any other supplementary information to enable the court to exercise such jurisdiction.

1 “(k) COURT REVIEW OF GUARDIANSHIP ORDERS.—

2 The laws of the State shall provide that each court in the
3 State which issues a guardianship order shall conduct an
4 annual review of the guardianship to determine whether
5 the guardian is performing the guardian's duties in ac-
6 cordance with the appropriate laws and whether the
7 guardianship should be continued, modified, or termi-
8 nated.

9 “(l) STANDARDS FOR PRIVATE PROFESSIONAL
10 GUARDIANS.—The laws of the State shall provide that
11 each private professional guardian in a State may operate
12 in the State only if such guardian is bonded and licensed
13 or certified in accordance with requirements consistent
14 with the provisions of this section developed by the chief
15 executive officer of the State.

16 “(m) DEFINITIONS.—For purposes of this section—

17 “(1) the term ‘guardian’—

1 “(A) means an individual vested by law
 2 with the power and duty of taking care of the
 3 person or property of another individual who—

4 “(i) is 18 years or older; and

5 “(ii) has been determined to be in-
 6 capable of administering such individual’s
 7 own affairs; but

8 “(B) does not include a guardian ad litem;
 9 “(2) the term ‘guardianship’—

10 “(A) means any legal relationship, includ-
 11 ing a conservatorship, in which an individual is
 12 vested by law with the power and duty of taking
 13 care of the person or property of a ward; but

14 “(B) does not include a guardianship ad
 15 litem; and

16 “(3) the term ‘ward’ means an individual 18
 17 years or older who has been—

18 “(A) determined to be incapable of admin-
 19 istering such individual’s own affairs; and

20 “(B) placed by a court under the care of
 21 a guardian.”.

22 **SEC. 3. DEMONSTRATION GRANTS FOR GUARDIANSHIP AD-**
 23 **VOCATE PROGRAMS.**

24 (a) IN GENERAL.—The Secretary of Health and
 25 Human Services (in this section referred to as the “Sec-

1 retary”) shall award 2-year demonstration grants to eligi-
2 ble States (as determined under subsection (c)) for the
3 establishment and operation of guardianship advocate pro-
4 grams, including the hiring and training of individuals to
5 serve as guardianship advocates and investigators in such
6 programs.

7 (b) DUTIES OF ADVOCATES AND INVESTIGATORS.—
8 Individuals hired and trained to serve as guardianship ad-
9 vocates and investigators with funds provided under sub-
10 section (a) shall serve as employees of the courts within
11 the State which conduct guardianship hearings and issue
12 determinations of incapacity and guardianship orders, and
13 shall provide information and services to wards and to in-
14 dividuals who are the subjects of guardianship petitions,
15 including—

16 (1) making reports to the court on individuals
17 who are the subjects of guardianship petitions;

18 (2) notifying such individuals of their rights
19 under State guardianship law;

20 (3) monitoring wards and guardians and notify-
21 ing the court of possible violations of State guard-
22 ianship law;

23 (4) investigating complaints of improper con-
24 duct made against guardians;

1 (5) providing advice and assistance to guard-
2 ians in carrying out their guardianships;

3 (6) evaluating reports from guardians;

4 (7) performing other services to assist the
5 courts in conducting and monitoring guardianships;
6 and

7 (8) investigating and evaluating the movement
8 of wards to new residences.

9 (c) ELIGIBILITY.—A State shall be eligible to receive
10 a grant under subsection (a) if it submits an application
11 to the Secretary at such time, in such form, and contain-
12 ing such information and assurances as the Secretary may
13 require, including an assurance that the State shall pre-
14 pare and submit to the Secretary an evaluation of each
15 program in the State that is funded with a grant received
16 under subsection (a).

17 (d) PREFERENCE TO SELF-FINANCING PROGRAMS.—
18 In awarding grants under subsection (a), the Secretary
19 shall give preference to those States that provide assur-
20 ances to the Secretary that the program funded with such
21 a grant will, without Federal financial assistance, continue
22 to operate after the expiration of the grant.

23 (e) REPORT TO CONGRESS.—Not later than 3 years
24 after the final grant is awarded under subsection (a), the
25 Secretary shall submit a report to Congress—

1 (1) describing the programs funded with such
2 grants;

3 (2) evaluating the effect of such programs on
4 the guardianship process and on the protection of
5 the rights of wards and individuals subject to guard-
6 ianship petitions; and

7 (3) containing recommendations on the desir-
8 ability of continuing the funding of such programs
9 on a permanent basis.

10 (f) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated \$5,000,000 for grants
12 under subsection (a). Any amounts appropriated pursuant
13 to the authority of this subsection shall remain available
14 until expended.

15 (g) DEFINITION.—In this section, the term “State”
16 means each of the 50 States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Islands,
18 Guam, American Samoa, and the Northern Mariana Is-
19 lands.