

30:4-165.8

LEGISLATIVE HISTORY CHECKLIST  
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(Guardianship  
cases--certain--extend  
time for DHS  
review)

LAWS OF: 1990

CHAPTER: 50

Bill No: S2052

Sponsor(s): Codey

Date Introduced: Pre-filed

Committee: Assembly: Health & Human Services

Senate: Institutions, Health & Welfare

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: May 21, 1990

Senate: April 30, 1990

Date of Approval: July 3, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[FIRST REPRINT]  
SENATE, No. 2052

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator CODEY

1 AN ACT concerning the review of certain guardianship cases<sup>1</sup>,  
2 amending P.L.1970, c.289<sup>1</sup> and amending and supplementing  
3 P.L.1985, c.133.  
4

5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 <sup>1</sup>1. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to  
8 read as follows:

9 2. The moving papers shall include a verified complaint, an  
10 affidavit from a practicing physician or a psychologist licensed  
11 pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit  
12 from the chief executive officer, medical director or other  
13 officer having administrative control over the program from  
14 which the individual is receiving functional or other services  
15 provided by the Division of Mental Retardation. The affidavits  
16 shall set forth with particularity [why it is believed that the  
17 individual is in need of a guardian] the facts supporting the  
18 affiant's belief that the alleged mental incompetent suffers from  
19 a significant chronic functional impairment to such a degree that  
20 the person either lacks the cognitive capacity to make decisions  
21 for himself or to communicate, in any way, decisions to others.  
22 For the purposes of this section, "significant chronic functional  
23 impairment" includes, but is not limited to, a lack of  
24 comprehension of concepts related to personal care, health care  
25 or medical treatment.<sup>1</sup>

26 (cf: P.L.1985, c.133, s.5)

27 <sup>1</sup>[1.] <sup>2</sup>2.<sup>1</sup> Section 8 of P.L.1985, c.133 (C.30:4-165.13) is  
28 amended to read as follows:

29 8. Within [five] eight years after the effective date of [this  
30 amendatory and supplementary act] P.L.1985, c.133 (C.30:4-165.4  
31 et al.), the commissioner shall review the case of every person  
32 who received guardianship services without prior judicial review  
33 before the effective date of [this amendatory and supplementary  
34 act] P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for a  
35 guardian appears to continue, the commissioner shall apply to the  
36 Superior Court upon notice to the alleged mental incompetent for  
37 the appointment of a guardian of the person in the same manner  
38 as provided in section 1 of P.L.1970, c.289 (C.30:4-165.7), unless  
39 another application is pending.

40 Upon the receipt of a complaint for the appointment of a

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SIH committee amendments adopted March 12, 1990.

1 guardian, the court shall appoint an attorney where the alleged  
2 mental incompetent is not represented by an attorney. <sup>1</sup>[The  
3 attorney appointed shall receive a reasonable fee determined by  
4 the court. [If the alleged incompetent cannot afford an attorney,  
5 the fee shall be paid by the State.] The fee shall include the  
6 reasonable costs incurred by the attorney in obtaining  
7 independent expert advice.]<sup>1</sup> The attorney, after conducting an  
8 investigation into the matter, which shall include an interview  
9 with the alleged mental incompetent, an interview with the  
10 proposed guardian, and the report of an independent expert  
11 professionally qualified to render an opinion on issues pertaining  
12 to incompetency, shall advise the court by way of a report in  
13 affidavit form whether there is cause to dispute either the  
14 contention of the commissioner that the appointment of a  
15 guardian is necessary or the commissioner's recommendation as  
16 to [who] whom that guardian should be. If the alleged mental  
17 incompetent expresses an opinion on the subject, the attorney  
18 shall advise the court of that opinion. The facts contained in the  
19 report of the attorney shall be sworn to or verified in a manner as  
20 prescribed by the court.

21 If, after reviewing the report of the attorney, there appears to  
22 be no difference between the position of the commissioner and  
23 the findings of the attorney, the court may proceed in a summary  
24 fashion to appoint a guardian. A plenary hearing shall be held if  
25 requested by the alleged mental incompetent, his attorney, or  
26 anyone acting on his behalf.

27 (cf: P.L.1985, c.133, s.8)

28 <sup>1</sup>[2.] 3.<sup>1</sup> Section 9 of P.L.1985, c.133 (C.30:4-165.14) is  
29 amended to read as follows:

30 9. The court shall appoint the Public Advocate to serve as  
31 counsel for persons who do not have an attorney and over whom  
32 guardianship is sought pursuant to [this amendatory and  
33 supplementary act] P.L.1985, c.133 (C.30:4-165.4 et al.) if the  
34 petition seeks only guardianship of the person, to the extent that  
35 funds are available for this purpose. If the Public Advocate is  
36 appointed to represent an alleged mental incompetent, no  
37 attorney's fee is payable.

38 (cf: P. L. 1985, c.133, s.9)

39 <sup>1</sup>[3.] 4.<sup>1</sup> Section 15 of P.L.1985, c.133 is amended to read as  
40 follows:

41 15. This act shall take effect on March 1, 1985 except that the  
42 periodic review mandated in subsection b. of section 10 of this  
43 act shall not be required until [five] eight years after the  
44 effective date of this act.

45 (cf: P.L.1985, c.133, s.15)

46 <sup>1</sup>[4.] 5.<sup>1</sup> (New section) Notwithstanding the provisions of  
47 section 88 of P.L.1965, c.59 (C.30:4-165.5) to the contrary, the  
48 commissioner shall review the cases of persons to determine  
49 whether a person needs a guardian or will need a guardian on

1 attainment of his majority, in accordance with the following  
2 order of priority:

3 a. Persons who received guardianship services without prior  
4 judicial review before the effective date of P.L.1985, c.133  
5 (C.30:4-165.4 et al.) and persons with an imminent need for  
6 medical treatment or a <sup>1</sup>behavioral<sup>1</sup> treatment plan that requires  
7 a guardian's consent;

8 b. Minors and persons over the age of 18 who are receiving  
9 functional or other services from the Division of Developmental  
10 Disabilities.

11 <sup>1</sup>[5.] 6.<sup>1</sup> (New section) The Commissioner of Human Services,  
12 in consultation with the Public Advocate, shall report to the  
13 Governor and the Legislature annually on: the number of cases  
14 reviewed by the commissioner pursuant to section 8 of P.L.1985,  
15 c.133 (C.30:4-165.13); the disposition of these cases, including  
16 the number of cases referred to the Attorney General; the  
17 number of cases remaining to be reviewed; the number of cases in  
18 which the Public Advocate was appointed to serve as counsel; and  
19 the disposition of these cases. The commissioner shall include in  
20 the report any recommendations for administrative or legislative  
21 action that he deems necessary in order to ensure that all cases  
22 are reviewed as required pursuant to section 8 of P.L.1985, c.133  
23 (C.30:4-165.13).

24 <sup>1</sup>[6.] 7.<sup>1</sup> This act shall take effect immediately.

25

26

27

#### HUMAN SERVICES

28

29 Extends time frame for Commissioner of Human Services' review  
30 of certain guardianship cases and establishes priorities for review  
31 of cases.

1 are reviewed as required pursuant to section 8 of P.L.1985, c.133  
2 (C.30:4-165.13).

3 6. This act shall take effect immediately.  
4  
5

6 STATEMENT  
7

8 This bill amends P.L.1985, c.133 (C.30:4-165.4 et al.) to extend  
9 the time period during which the Commissioner of Human  
10 Services is required to review the case of every developmentally  
11 disabled person who received guardianship services from the  
12 Division of Developmental Disabilities (formerly the Division of  
13 Mental Retardation) without prior judicial review, before the  
14 1985 law was enacted. The 1985 law required that the  
15 commissioner complete all reviews within five years of the  
16 effective date of that law, that is, by March 1, 1990. This bill  
17 would extend the time period three more years to 1993.

18 Extension of the deadline to 1993 will allow for continued  
19 provision of guardianship services by the Division of  
20 Developmental Disabilities to hundreds of clients, pending  
21 judicial review of the guardianship action. Without the extension,  
22 these clients of the division, who are severely impaired and  
23 incapable of making critical decisions on their own behalf, would  
24 lose the guardianship services they require.

25 To ensure that these reviews are completed by the new  
26 deadline, the bill also establishes priorities for the division's  
27 review of guardianship cases so that persons who received  
28 guardianship services without prior judicial review and persons  
29 who have an imminent need for medical treatment or a treatment  
30 plan that requires a guardian's consent are reviewed before  
31 minors and other persons over the age of 18 who are receiving  
32 services from the division, whose need for a guardian may not be  
33 as urgent. The bill also clarifies that the Public Advocate shall  
34 be appointed to serve as counsel for persons over whom  
35 guardianship is sought, if the petition seeks only guardianship of  
36 the person (rather than guardianship of the person and the  
37 estate). This provision will ensure that the limited resources of  
38 the Department of the Public Advocate are not used to represent  
39 persons who have financial resources and may be able to pay for  
40 the services of a private attorney.

41 Because of difficulties in coordinating the activities of the  
42 various government agencies involved in the process of  
43 completing guardianship appointments (i.e., the Department of  
44 Human Services, the Division of Advocacy for the  
45 Developmentally Disabled in the Department of the Public  
46 Advocate, the Office of the Attorney General and the courts in  
47 the various counties), and problems in delineating specifically  
48 what procedures and documents would be required in these  
49 guardianship actions (laws and court rules applicable to persons

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1 receiving services from the Division of Developmental  
2 Disabilities differed from the laws and court rules governing  
3 incompetency proceedings, in general), the Commissioner of  
4 Human Services was not able to begin to review the 6,000  
5 guardianship cases that were pending until three years after the  
6 1985 law was enacted.

7

8

9

#### HUMAN SERVICES

10

11 Extends time frame for Commissioner of Human Services' review  
12 of certain guardianship cases and establishes priorities for review  
13 of cases.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2052

STATE OF NEW JERSEY

DATED: MAY 14, 1990

The Assembly Health and Human Services Committee favorably reports Senate Bill No. 2052 (1R).

This bill amends P.L.1985, c.133 (C.30:4-165.4 et al.) to extend the time period during which the Commissioner of Human Services is required to review the case of every developmentally disabled person who received guardianship services from the Division of Developmental Disabilities (DDD, formerly the Division of Mental Retardation) without prior judicial review, before P.L.1985, c.133 was enacted. That law required that the commissioner complete all reviews within five years of the effective date of that law, i.e., by March 1, 1990. This bill extends the time period by three years, to March 1, 1993.

Extension of the deadline to 1993 will allow DDD to continue to provide guardianship services to an estimated 7,000 clients, pending judicial review of the guardianship action.

To ensure that these reviews are completed by the new deadline, the bill also establishes priorities for the review by DDD of guardianship cases so that persons who received guardianship services without prior judicial review and persons who have an imminent need for medical treatment or a behavioral treatment plan that requires a guardian's consent are reviewed before minors and other persons over the age of 18 who are receiving DDD services, whose need for a guardian may not be as urgent. The bill also clarifies that the Public Advocate shall be appointed to serve as counsel for persons over whom guardianship is sought, if the petition seeks only guardianship of the person (rather than guardianship of the person and the estate). This provision will ensure that the limited resources of the Department of the Public Advocate are not used to represent persons who have financial resources and may be able to pay for the services of a private attorney.

The Department of Human Services was not able to begin its review of the over 7,000 guardianship cases that were pending until three years after P.L.1985, c.133 was enacted, because of difficulties in coordinating the activities of the various government agencies involved in the process of completing guardianship appointments (the Departments of Human Services and the Public Advocate, the Office of the Attorney General and the courts in the various counties).

This bill is identical to Assembly Bill No. 3422 (Deverin/Hudak), which the committee also reported on this date.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

**SENATE, No. 2052**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 12, 1990

The Senate Institutions, Health and Welfare Committee favorably reports Senate Bill No. 2052 with committee amendments.

As amended by committee, this bill amends P.L.1985, c.133 (C.30:4-165.4 et al.) to extend the time period during which the Commissioner of Human Services is required to review the case of every developmentally disabled person who received guardianship services from the Division of Developmental Disabilities (formerly the Division of Mental Retardation) without prior judicial review, before the 1985 law was enacted. The 1985 law required that the commissioner complete all reviews within five years of the effective date of that law, that is, by March 1, 1990. This bill would extend the time period three more years to 1993.

Extension of the deadline to 1993 will allow for continued provision of guardianship services by the Division of Developmental Disabilities to an estimated 7,000 clients, pending judicial review of the guardianship action.

To ensure that these reviews are completed by the new deadline, the bill also establishes priorities for the division's review of guardianship cases so that persons who received guardianship services without prior judicial review and persons who have an imminent need for medical treatment or a behavioral treatment plan that requires a guardian's consent are reviewed before minors and other persons over the age of 18 who are receiving services from the division, whose need for a guardian may not be as urgent. The bill also clarifies that the Public Advocate shall be appointed to serve as counsel for persons over whom guardianship is sought, if the petition seeks only guardianship of the person (rather than guardianship of the person and the estate). This provision will ensure that the limited resources of the Department of the Public Advocate are not used to represent persons who have financial resources and may be able to pay for the services of a private attorney.

The Department of Human Services was not able to begin its review of the over 7,000 guardianship cases that were pending until three years after the 1985 law was enacted, because of difficulties in coordinating the activities of the various government agencies involved in the process of completing guardianship appointments (i.e., the Department of Human Services, the Department of the Public Advocate, the Office of the Attorney General and the courts in the various counties).



The committee amended the bill to: specify in NJSA 30:4-165.8 that the affidavit accompanying the guardianship papers state the facts supporting the affiant's belief that the alleged mental incompetent suffers from a significant chronic functional impairment to such a degree that the person either lacks the cognitive capacity to make decisions for himself or to communicate decisions to others; and delete the language in NJSA 30:4-165.13 that provided that an attorney appointed by the court to represent an alleged mental incompetent shall receive a reasonable fee, which fee could include reasonable costs incurred by the attorney in obtaining independent expert advice.