

30:4-165.4 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 30:4-165.4 et al

(Guardian-appointment)

LAWS OF: 1985

CHAPTER: 133

Bill No: A617

Sponsor(s): Deverin, Doria and Charles

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Substituted for S1839(not attached since identical to A617). Amendments during passage denoted by asterisks.

Date of Passage:

Assembly: November 19, 1984

Senate: April 28, 1984

Date of Approval: April 12, 1985

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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ASSEMBLY, No. 617

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen DEVERIN, DORIA and CHARLES

AN ACT concerning the appointment of guardians in certain cases, amending P. L. 1965, c. 59, amending the title of P. L. 1970, c. 289, amending and supplementing the body of said act, ***[and]*** repealing sections 3 and 4 thereof*, and making an appropriation therefor*.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 87 of P. L. 1965, c. 59 (C. 30:4-165.4) is amended
2 to read as follows:

3 87. "Guardianship services **[for the mentally retarded]**" shall
4 mean those services and programs provided by the Division of
5 Mental Retardation for the purpose of implementing its responsi-
6 bility toward the **[mentally retarded individual,]** *individuals* for
7 whom it is performing the services of guardian of the person.

1 2. Section 88 of P. L. 1965, c. 59 (C. 30:4-165.5) is amended
2 to read as follows:

3 88. Whenever a **[mentally retarded]** minor has been admitted to
4 functional *or other* services provided by the **[department]** *Division*
5 *of Mental Retardation* on application **[of the parent or guardian]**
6 as provided herein and has not been discharged therefrom, the
7 commissioner shall, not less than six months nor more than **[three**
8 **years]** *18 months* prior to the **[twenty-first]** *18th* birthday of said
9 **[mentally retarded]** person, cause him to be examined to ascertain
10 whether it appears that such person **[is mentally deficient]** *will need*
11 *a guardian on attainment of his majority.*

12 If the commissioner anticipates that such person will **[**, by reason
13 of mental deficiency, continue to require protection and super-

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted October 22, 1984.

14 vision on his own interest, being incapable of managing himself
 15 and his affairs on the attainment of his majority,] *need a guardian,*
 16 the commissioner or his designated agent shall [inquire as to the
 17 intentions of the parent or guardian of said minor with respect
 18 to instituting proceedings for appointment of a guardian] *apply*
 19 *to the Superior Court in the same manner as provided in section 1*
 20 *of P. L. 1970, c. 289 (C. 30:4-165.7) for appointment of a guardian*
 21 *unless another application is pending.*

22 In the event that no guardian has been appointed [when the
 23 minor] *for a person who commences receiving functional or other*
 24 *services after the effective date of this amendatory and supple-*
 25 *mentary act and who has attained age [21] 18, and if the commis-*
 26 *sioner has ascertained that such person [is mentally deficient as*
 27 *provided above] appears to need a guardian, then the [Division*
 28 *of Mental Retardation within the department shall perform such*
 29 *services for the mentally deficient adult, as he may require, and*
 30 *which otherwise would be rendered by a guardian of his person]*
 31 *commissioner shall apply to the Superior Court in the same man-*
 32 *ner as provided in section 1 of P. L. 1970, c. 289 (C. 30:4-165.7) for*
 33 *appointment of a guardian unless another application is pending.*

34 *The commissioner shall also promptly advise in plain language*
 35 *any parent, spouse, relative, or other interested person of his*
 36 *findings and of the parent's or person's right to participate in the*
 37 *process of an adjudication and to be considered for appointment*
 38 *as a guardian. The commissioner may offer to these persons assist-*
 39 *ance to facilitate their appointment as guardian unless he has rea-*
 40 *son to question their fitness to serve.*

1 3. The title of P. L. 1970, c. 289 is amended to read as follows:

2 An act concerning mentally [ill, mentally deficient and mentally
 3 retarded] *incompetent* adults and supplementing chapter 4 of
 4 Title 30 of the Revised Statutes.

1 4. Section 1 of P. L. 1970, c. 289 (C. 30:4-165.7) is amended
 2 to read as follows:

3 1. [Any parent] *The commissioner or any parent, spouse, rela-*
 4 *tive, or interested party, on behalf of [a mentally-ill, mentally-*
 5 *deficient or mentally-retarded individual, as the case may be] an*
 6 *alleged mental incompetent* who is receiving [State or county]
 7 *functional or other services and is over 18 years of age may [at*
 8 *any time move in] file a complaint upon notice to the alleged*
 9 *mental incompetent with the Superior Court [or in the County*
 10 *Court] in the county furnishing the services or in which such*
 11 *parent, spouse, relative, or interested party resides for a judgment*
 12 *designating [him as the legal guardian of the person of such an*

13 individual] a guardian. *The county adjuster of the county of
 14 settlement shall be served with a copy of the moving papers and
 15 made a party to the action; except that the county adjuster may
 16 waive service of the moving papers if he has no reason to oppose
 17 the action. If the county adjuster elects to oppose the action he
 18 shall do so within 30 days after being served with a copy of the
 19 moving papers.* [The county adjuster of the county furnishing
 20 the services shall be served with a copy of the moving papers and
 21 made a party to the action; provided, however, that the county
 22 adjuster may waive service of the moving papers if he has no reason
 23 to oppose the action.]

1 5. Section 2 of P. L. 1970, c. 289 (C. 30:4-165.8) is amended
 2 to read as follows:

3 2. The moving papers shall include a verified complaint, [a
 4 medical] an affidavit from [the attending] a practicing physician
 5 [stating the nature of the mental illness, mental deficiency or
 6 mental retardation, as the case may be, of the individual] or a
 7 psychologist licensed pursuant to P. L. 1966, c. 282 (C. 45:14B-1
 8 et seq.), and an affidavit from the chief executive officer, medical
 9 director or other officer having [the general supervisory or] ad-
 10 ministrative control [of the institution at] over the program from
 11 which the individual is receiving functional or other services pro-
 12 vided by the Division of Mental Retardation [stating the length
 13 of the individual's commitment or period of treatment and the
 14 necessity of continuing the functional services]. The affidavits
 15 shall set forth with particularity why it is believed that the indi-
 16 vidual is in need of a guardian.

1 6. Section 5 of P. L. 1970, c. 289 (C. 30:4-165.11) is amended
 2 to read as follows:

3 5. [The term "parent" as used in this act shall mean the natural
 4 parent or parents, prior guardian, or other person standing in
 5 loco parentis of the individual. All other terms used in this act
 6 shall have the same meaning as defined in chapter 4 of Title 30
 7 of the Revised Statutes to which this act is supplementary.] As
 8 used in P. L. 1970, c. 289 (C. 30:4-165.7 et seq.) the term "mental
 9 incompetent" has the same meaning as defined in N. J. S. 3B:1-2.

1 7. (New section) Upon the receipt of a complaint for the appoint-
 2 ment of a guardian, the court shall *[hold a hearing to]* determine
 3 the necessity of the appointment. Disposition of the matter shall
 4 be in accordance with N. J. S. 3B:1-2 ————— and the
 5 Rules Governing the Courts of the State of New Jersey. In any
 6 case where a guardian is to be appointed, the court shall follow
 7 the priorities for choosing a guardian set forth in N. J. S. 3B:12-25.

8 ————— The court shall give due consideration to the
 9 religious preference of the proposed ward. The Commissioner of
 10 the Department of Human Services in his official capacity may be
 11 appointed guardian in cases under this amendatory and supple-
 12 mentary act, except that the commissioner shall only serve as
 13 guardian of the person.

1 8. (New section) Within five years after the effective date of this
 2 amendatory and supplementary act, the commissioner shall review
 3 the case of every person who received guardianship services with-
 4 out prior judicial review before the effective date of this amendatory
 5 and supplementary act. If the need for a guardian appears to
 6 continue, the commissioner shall apply to the Superior Court upon
 7 notice to the alleged mental incompetent for the appointment of a
 8 guardian of the person in the same manner as provided in section
 9 1 of P. L. 1970, c. 289 (C. 30:4-165.7), unless another application is
 9A pending.

10 Upon the receipt of a complaint for the appointment of a guard-
 11 ian, the court shall appoint an attorney where the alleged mental
 12 incompetent is not represented by an attorney. The attorney ap-
 13 pointed shall receive a reasonable fee determined by the court. If
 14 the alleged incompetent cannot afford an attorney, the fee shall be
 15 paid by *~~the~~ county of settlement, if any, of the alleged mental in-
 16 competent* *the State*. The fee shall include the reasonable costs
 17 incurred by the attorney in obtaining independent expert advice.
 18 The attorney, after conducting an investigation into the matter,
 19 which shall include an interview with the alleged mental in-
 20 competent, an interview with the proposed guardian, and the report
 21 of an independent expert professionally qualified to render an
 22 opinion on issues pertaining to incompetency, shall advise the court
 23 by way of a report in affidavit form whether there is cause to dispute
 24 either the contention of the commissioner that the appointment of a
 25 guardian is necessary or the commissioner's recommendation as to
 26 who that guardian should be. If the alleged mental incompetent
 27 expresses an opinion on the subject, the attorney shall advise the
 28 court of that opinion. The facts contained in the report of the
 29 attorney shall be sworn to or verified in a manner as prescribed by
 29A the court.

30 If, after reviewing the report of the attorney, there appears to
 31 be no difference between the position of the commissioner and the
 32 findings of the attorney, the court may proceed in a summary
 33 fashion to appoint a guardian. A plenary hearing shall be held
 34 if requested by the alleged mental incompetent, his attorney, or
 35 anyone acting on his behalf.

1 9. (New section) The court shall appoint the Public Advocate
 2 to serve as counsel for persons who do not have an attorney and
 3 over whom guardianship is sought pursuant to this amendatory
 4 and supplementary act to the extent that funds are available for
 5 this purpose. If the Public Advocate is appointed to represent an
 6 alleged mental incompetent, no attorney's fee is payable.

1 10. (New section) a. Whenever the commissioner believes that
 2 guardianship is no longer required or that another person should
 3 be appointed to serve as guardian, he shall apply to the Superior
 4 Court for an order modifying or terminating the letters of guard-
 5 ianship. Where someone other than the commissioner is serving
 6 as guardian, notice shall be provided to that person. ***[**In cases
 7 where the commissioner serves as guardian, the Public Advocate
 8 shall be given notice of this review with an opportunity to meet the
 9 the person subject to review and to inspect the commissioner's
 10 records.**]***

11 b. At least once every three years, the commissioner shall review
 12 the case of each person who receives functional or other services
 13 and who has a guardian.

14 c. The Public Advocate, the incompetent person, or someone
 15 acting in his behalf may institute a similar action for judicial
 16 review at any time.

17 **d. In cases where the commissioner serves as guardian, the*
 18 *Public Advocate shall be given notice of any actions taken pursuant*
 19 *to subsection a. or b. of this section. The Public Advocate shall be*
 20 *given an opportunity to meet the person subject to review and*
 21 *inspect the commissioner's records.**

1 11. (New section) The commissioner shall adopt pursuant to the
 2 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
 3 et seq.) such rules as are necessary to effectuate the purposes of
 4 this amendatory and supplementary act.

1 12. The following are repealed: sections 3 and 4 of P. L. 1970,
 2 c. 289 (C. 30:4-165.9 and 30:4-165.10).

1 **13. (New section) There is appropriated from the General Fund*
 2 *the sum of \$35,000.00 to the Department of Human Services and*
 3 *\$35,000.00 to the Department of the Public Advocate to effectuate*
 4 *the purposes of this act.*

1 *14. (New section) Three years after enactment of this amend-*
 2 *atory and supplementary act, the Department of Human Services*
 3 *shall conduct a study of the number and type of cases brought to*
 4 *obtain guardianship pursuant to this amendatory and supple-*
 5 *mentary act. This study shall be completed within 90 days and*
 6 *forwarded to the Clerk of the General Assembly, the Secretary of*

7 *the Senate, the General Assembly Corrections, Health and Human*
8 *Services Committee and the Senate Institutions, Health and Wel-*
9 *fare Committee.**

1 ***[13.]*** *15.* This act shall take effect ***[immediately]*** *on
2 *March 1, 1985** except that the periodic review mandated in sub-
3 section b. of section 10 of this act shall not be required until five
4 years after the effective date of this act.

3 be appointed to serve as guardian, he shall apply to the Superior
 4 Court for an order modifying or terminating the letters of guard-
 5 ianship. Where someone other than the commissioner is serving
 6 as guardian, notice shall be provided to that person. In cases where
 7 the commissioner serves as guardian, the Public Advocate shall
 8 be given notice of this review with an opportunity to meet the
 9 the person subject to review and to inspect the commissioner's
 10 records.

11 b. At least once every three years, the commissioner shall review
 12 the case of each person who receives functional or other services
 13 and who has a guardian.

14 c. The Public Advocate, the incompetent person, or someone
 15 acting in his behalf may institute a similar action for judicial
 16 review at any time.

1 11. (New section) The commissioner shall adopt pursuant to the
 2 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
 3 et seq.) such rules as are necessary to effectuate the purposes of
 4 this amendatory and supplementary act.

1 12. The following are repealed: sections 3 and 4 of P. L. 1970,
 2 c. 289 (C. 30:4-165.9 and 30:4-165.10).

1 13. This act shall take effect immediately except that the periodic
 2 review mandated in subsection b. of section 10 of this act shall not
 3 be required until five years after the effective date of this act.

STATEMENT

This bill establishes procedures for obtaining guardianship over
 mentally incompetent persons 18 years of age and older who are
 receiving services from the Division of Mental Retardation in the
 Department of Human Services.

The purposes of the bill are to eliminate the cost and burden
 to parents of obtaining guardianship over their mentally incompe-
 tent children who are 18 years of age and older and to ensure the
 due process rights of these persons in guardianship proceedings.
 The bill: 1. expands the definition of "guardianship services"
 to cover persons with disabilities other than mental retardation
 who receive services from the Division of Mental Retardation;
 2. requires the Commissioner of Human Services to file a com-
 plaint with the court for appointment of a guardian when he deter-
 mines that a minor who is almost 18 years of age and mentally
 retarded or has another disability and is receiving services from
 the Division of Mental Retardation, appears to be mentally incom-
 petent and in need of a guardian; 3. directs the commissioner

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to review within five years the case of each person currently receiving guardianship services without prior judicial review; 4. provides that the alleged mental incompetent shall be noticed of the action and shall be represented by an attorney at the guardianship hearing; 5. provides that a successor guardian may be appointed at the same time as the guardian; and 6 provides that at least once every three years the commissioner shall review each case where a guardian has been appointed, with this review requirement taking effect five years after the date of enactment.

This bill repeals sections 3 and 4 of P. L. 1970, c. 289 (C. 30:4-165.9 and 30:4-165.10) concerning opposition to guardianship by the county adjuster and the guardianship of the mentally ill, respectively.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 617

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 1984

As amended by the committee, this bill establishes procedures for obtaining guardianship over mentally incompetent persons 18 years of age and older who are receiving services from the Division of Mental Retardation in the Department of Human Services.

The purposes of the bill are to eliminate the cost and burden to parents of obtaining guardianship over their mentally incompetent children who are 18 years of age and older and to ensure the due process rights of these persons in guardianship proceedings. The bill: 1. expands the definition of "guardianship services" to cover persons with disabilities other than mental retardation who receive services from the Division of Mental Retardation; 2. requires the Commissioner of Human Services to file a complaint with the court for appointment of a guardian when he determines that a minor who is almost 18 years of age and mentally retarded or has another disability and is receiving services from the Division of Mental Retardation, appears to be mentally incompetent and in need of a guardian; 3. directs the commissioner to review within five years the case of each person currently receiving guardianship services without prior judicial review; 4. provides that the alleged mental incompetent shall be notified of the action and shall be represented by an attorney at the guardianship hearing; 5. provides that a successor guardian may be appointed at the time as the guardian; and 6. provides that at least once every three years the commissioner shall review each case where a guardian has been appointed, with this review requirement taking effect five years after the date of enactment.

This bill repeals sections 3 and 4 of P. L. 1970, c. 289 (C. 30:4-165.9 and 30:4-165.10) concerning opposition to guardianship by the county adjuster and the guardianship of the mentally ill, respectively.

Through amendment the committee:

1. Added appropriations of \$35,000.00 to the Department of Human Services and \$35,000.00 to the Department of Public Advocate to effectuate the purposes of the bill.
2. Added a provision to serve notice of complaints seeking guardianship with the county adjuster of the county of settlement.

3. Added a provision to have the State, instead of the county of settlement, pay attorney fees if an alleged incompetent cannot afford one.

4. Added a section directing the Department of Human Services to conduct a study of the number and type of cases brought to obtain guardianship.

5. Added a section to provide notice to the Public Advocate in cases where the Commissioner of Human Services serves as guardian.

6. Changed the effective date to March 1, 1985 instead of immediately.

The committee received testimony in support of this bill which stated that this bill would aid concerned persons in assuming the responsibility for mentally retarded persons who are unable to care for themselves.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 617

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

This bill establishes procedures for obtaining guardianship over mentally incompetent persons 18 years of age and older who are receiving services from the Division of Mental Retardation in the Department of Human Services.

The purpose of these procedures is to eliminate or reduce the cost and difficulty for parents in obtaining guardianship of their adult children who are mentally incompetent and to safeguard the due process rights of these mentally incompetent persons in guardianship proceedings.

This bill expands the definition of "guardianship services" to cover persons with disabilities other than mental retardation who receive services from the Division of Mental Retardation; requires the Commissioner of Human Services to file a complaint with the court for appointment of a guardian when he determines that a minor who is almost 18 years of age and is receiving services from the Division of Mental Retardation, appears to be mentally incompetent and in need of a guardian; directs the commissioner to review within five years after March 1, 1985 the case of each person currently receiving guardianship services without prior judicial review; provides that the alleged mental incompetent shall be given notice of the action and shall be represented by an attorney at the guardianship hearing; and provides that beginning five years after enactment of the bill, the commissioner shall review each case where a guardian has been appointed at least once every three years.

This bill also provides that the county adjuster be notified of a pending guardianship action and be given the opportunity to be made a party to the action; that an alleged mental incompetent's attorney's fee be paid by the State instead of the county of settlement; that the Public Advocate be given notice of and an opportunity to meet the mental incompetent in guardianship review actions where the Commissioner of Human Services serves as the guardian and that Human Services be required to undertake a review, three years after enactment, of the

number and types of cases brought to obtain guardianship under this bill.

To effectuate the bill's provisions, \$35,000.00 is appropriated to Human Services and \$35,000.00 to the Public Advocate.

Additionally, the bill repeals sections 3 and 4 of P. L. 1970, c. 289 (C. 30:4-165.9 and C. 30:4-165.10) concerning opposition to guardianship by the county adjuster and guardianship of the mentally ill.
