

52:27G-20 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:27G-20 et al

("Public Guardianship program for Elderly Adults")

LAWS OF: 1985

CHAPTER: 298

Bill No: S1927

Sponsor(s): Pallone, Van Wagner and Costa

Date Introduced: June 25, 1984

Committee: Assembly: Aging

Senate: Aging; Revenue, Finance and Appropriations

Amended during passage: Yes Amendments during passage denoted by asterisks

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Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes 1-28-85 and 10-22-85

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Senate. Committee on Aging.
044 Public hearing on S.1927, held 10-1-85. Trenton, 1985.
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SENATE, No. 1927

STATE OF NEW JERSEY

INTRODUCED JUNE 25, 1984

By Senators PALLONE, VAN WAGNER and COSTA

Referred to Committee on Aging

AN ACT ***[requiring the Public Advocate to establish a]*** *estab-*
*lishing the office of the** public ***[guardianship program]***
*guardian** for elderly adults and making an appropriation
therefor.

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

1 1. This act shall be known and may be cited as the "Public
2 ***[Guardianship Program]*** *Guardian** for Elderly Adults *Act*."

1 2. The Legislature finds and declares that ***[some elderly persons**
2 in the State, because of grave disability, are unable to meet varying
3 essential requirements for their physical health or to manage vary-
4 ing essential aspects of their financial resources; that]* private
5 guardianship ***[is inadequate]*** *for an elderly adult may not be*
6 *feasible** where there are no willing and responsible family mem-
7 bers or friends to serve as guardian ***[and where the gravely dis-**
8 abled elderly person does not have adequate income or wealth for
9 the compensation of a private guardian]*, that this act establishes
10 a public guardianship program for elderly adults for the purpose
11 of furnishing guardianship services to ***[gravely disabled]*** elderly
12 persons at reduced or no cost *when appropriate**, ***[unless the**
13 gravely disabled elderly person has adequate income or wealth to
14 compensate a private guardian;]* *and** that this act intends to
15 promote the general welfare by establishing a public guardianship
16 system that permits ***[gravely disabled]*** elderly persons ***[at**
17 reduced or no cost, unless the gravely disabled elderly person has
18 adequate income or wealth to compensate a private guardian; that
19 this act intends to promote the general welfare by establishing a
20 public guardianship system that permits gravely disabled elderly

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:

*—Senate committee amendments adopted October 22, 1984.

21 persons]* to determinatively participate as fully as possible in all
22 decisions that affect them*[, that assists these persons to regain
23 or develop their capacities to the maximum extent possible, and
24 that accomplishes these objectives through the use of the least
25 restrictive alternatives]*.

1 3. As used in this act:

2 a. "Court" means the Superior Court.

3 b. "Elderly adult" means a person age 60 years or older.

4 *c. "Gravely disabled" means unable to meet essential require-
5 ments for one's physical health or safety or to manage one's financial
6 resources as a result of severe mental disorder.

7 d. "Lack of capacity to make informed decisions about care,
8 treatment, or management services" means the inability, by reason
9 of mental condition, to achieve a rudimentary understanding, after
10 conscientious efforts at explanation, of the purpose, nature, or
11 possible significant benefit of care, treatment, or management
12 services to be provided under public guardianship; provided that a
13 person is deemed incapable of understanding the purpose if, as a
14 result of impaired mental ability to perceive reality, he cannot
15 realize that his recent behavior has caused or has created a clear
16 and substantial risk of serious physical injury, illness, or disease
17 or of gross financial mismanagement or manifest financial vulner-
18 ability to oneself; and provided further that a person is deemed to
19 lack the capacity to make informed decisions about care, treatment,
20 or management services if the reason for refusing the same is
21 expressly based on either the belief that he is unworthy of assis-
22 tance or the desire to harm or punish oneself.

23 e. "Psychotropic medication" means any drug or compound
24 affecting the mind, behavior, intellectual functions, perception,
25 moods, and emotion and includes antipsychotic, antidepressant,
26 antimanic, and antianxiety drugs.

27 f. "Public guardian" means the head of the public guardianship
28 program for elderly adults.

29 g. "Severe mental disorder" means a severe impairment of
30 emotional processes, ability to exercise conscious control of one's
31 actions, or ability to perceive reality or to reason or understand,
32 which impairment is manifested by instances of grossly disturbed
33 behavior or faulty perceptions.

34 h. "Unable to manage one's financial resources" means unable
35 to take those actions necessary to obtain, administer, or dispose of
36 real or personal property, intangible property, business property,
37 benefits, or income so that, in the absence of public guardianship,
38 gross financial mismanagement or manifest financial vulnerability

39 is likely to occur in the near future. For purposes of this act, any
 40 inability shall be evidenced by recent behaviors causing harm or
 41 creating a clear and substantial risk thereof, and at least one in-
 42 cidence of this behavior shall have occurred within twenty days of
 43 the filing of the petition for public guardianship, except that this
 44 inability is not to be evidenced solely by isolated incidents of
 45 negligence or improvidence. This requirement shall not apply in the
 46 case of a petition for renewal of public guardianship.

47 i. "Unable to meet essential requirements for one's physical
 48 health or safety" means unable, through one's own efforts and
 49 through acceptance of assistance from family, friends, and other
 50 available private and public sources, to meet one's needs for medical
 51 care, nutrition, clothing, shelter, hygiene, or safety so that, in the
 52 absence of public guardianship, serious physical injury, illness, or
 53 disease is likely to occur in the near future. For purposes of this
 54 act, any inability shall be evidenced by recent behaviors causing
 55 harm or creating a clear and substantial risk thereof, and at least
 56 one incidence of this behavior shall have occurred within twenty
 57 days of the filing of the petition for public guardianship. This
 58 requirement shall not apply in the case of petition for renewal of
 59 public guardianship.]*

1 ***[4. The Public Advocate shall establish a public guardianship**
 2 **program for elderly adults which is independent of any service-**
 3 **providing agency, and appoint the head of the program who shall**
 4 **be the public guardian. The public guardian is authorized to take**
 5 **any actions on behalf of a ward that a private guardian is au-**
 6 **thorized to take, except as otherwise provided in this act.]***

1 ***[5. The Public Advocate shall prepare guidelines for the public**
 2 **guardianship program for elderly adults which shall include**
 3 **standards regarding the number of program offices, but no office**
 4 **shall be responsible for more than 500 wards. If a program office is**
 5 **responsible for 500 wards, another office is to be established for**
 6 **additional wards. No office shall assume responsibility for any**
 7 **wards beyond a ratio of thirty wards per professional staff**
 8 **member.]***

1 ***[6. The public guardian may serve as guardian and conservator**
 2 **or either of these, after appointment by a court pursuant to the pro-**
 3 **visions of Title 3B of the New Jersey Statutes (N. J. S. 3B:1-1**
 4 **et seq.) provided that the proposed ward of the public guardian has**
 5 **had the opportunity for the hearing prescribed in section 10 of this**
 6 **act.**

7 a. The public guardian shall have the same powers and duties
 8 as a private guardian or conservator, except as otherwise limited
 9 by law or court order.

10 b. The public guardian may, on his own motion, or at the request
 11 of the court, intervene at any time in any guardianship or con-
 12 servatorship proceeding involving a ward by appropriate motion
 13 of the court, if the public guardian or the court deems the interven-
 14 tion to be justified because an appointed guardian or conservator
 15 is not fulfilling his duties, the estate is subject to disproportionate
 16 waste because of the costs of the guardianship or conservatorship,
 17 or the best interests of the ward require intervention.】*

1 *【7. a. The public guardian shall employ at least one social
 2 worker and one financial manager and may employ additional staff
 3 members necessary for the proper performance of his duties, to the
 4 extent authorized in the budget for the program.

5 b. The public guardian may delegate to members of his staff
 6 powers and duties as guardian or conservator and other powers
 7 and duties that are created by this act, although the public guardian
 8 retains ultimate responsibility for the proper performance of these
 9 delegated functions. The public guardian:

10 (1) May formulate and adopt those procedures that are
 11 necessary to promote the efficient conduct of the work and general
 12 administration of the office, its professional staff, and other em-
 13 ployees;

14 (2) May contract for services necessary to carry out the duties
 15 of the public guardian program;

16 (3) May accept the services of volunteer workers or consultants
 17 at no compensation or at nominal or token compensation and reim-
 18 burse them for their proper and necessary expenses;

19 (4) Shall keep and maintain proper financial and statistical
 20 records concerning all cases in which the public guardian provides
 21 guardianship or conservatorship services, provided that the privacy
 22 and confidentiality of these records for each ward are preserved;
 23 and

24 (5) May not commit a ward to a mental facility without an in-
 25 voluntary commitment proceeding as provided by law.】*

1 *4. *There is created in the Executive Branch of the State Gov-*
 2 *ernment the Office of the Public Guardian for Elderly Adults. For*
 3 *the purpose of complying with the provisions of Article V, Section*
 4 *IV, paragraph 1 of the New Jersey Constitution, the Office of the*
 5 *Public Guardian for Elderly Adults is allocated to the Department*
 6 *of Community Affairs, but notwithstanding this allocation, the*
 7 *office shall be independent of any supervision or control by the de-*
 8 *partment or any board or officer thereof.*

1 5. *The administrator and chief executive officer of the office is*
 2 *the public guardian, who shall be a person qualified by training and*

3 *experience to perform the duties of the office. The public guardian*
4 *shall be appointed by the Governor, with the advice and consent*
5 *of the Senate, and shall serve at the pleasure of the Governor dur-*
6 *ing the Governor's term of office and until the appointment and*
7 *qualification of the public guardian's successor. The public guard-*
8 *ian shall devote his entire time to the duties of the position and*
9 *shall receive a salary as determined by law. Any vacancy occurring*
10 *in the position of the public guardian shall be filled in the same*
11 *manner as the original appointment; except that if the public*
12 *guardian dies, resigns, becomes ineligible to serve for any reason,*
13 *or is removed from office, the Governor shall appoint an acting*
14 *public guardian, who shall serve until the appointment and qualifi-*
15 *cation of the public guardian's successor, but in no event longer*
16 *than six months from the occurrence of the vacancy, and who shall*
17 *exercise during this period all the powers and duties of the public*
18 *guardian pursuant to the provisions of this act.*

1 6. *The public guardian, as administrator and chief executive*
2 *officer:*

3 a. *Shall administer and organize the work of the office and estab-*
4 *lish therein any administrative divisions he may deem necessary,*
5 *proper and expedient. The public guardian may delegate to sub-*
6 *ordinate officers or employees of the office any of his powers as he*
7 *may deem desirable to be exercised under his supervision and con-*
8 *trol;*

9 b. *Shall adopt rules and regulations in accordance with the "Ad-*
10 *ministrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)*
11 *to effectuate the purposes of this act;*

12 c. *Shall appoint and remove stenographic, clerical and other sec-*
13 *retarial assistants as may be required for the proper conduct of*
14 *the office, subject to the provisions of Title 11 of the Revised Stat-*
15 *utes, and other applicable statutes, and within the limits of funds*
16 *appropriated or otherwise made available therefor. In addition,*
17 *and within funding limits, the public guardian may appoint, retain*
18 *or employ, without regard to the provisions of Title 11 or any other*
19 *statutes, any officers, financial manager, social workers or other*
20 *professionally qualified personnel on a contract basis or otherwise*
21 *as the public guardian deems necessary;*

22 d. *Shall maintain suitable headquarters for the office and other*
23 *quarters as the public guardian may deem necessary to the proper*
24 *functioning of the office;*

25 e. *May accept the services of volunteer workers or consultants*
26 *at no compensation or at nominal or token compensation and reim-*
27 *burse them for their proper and necessary expenses;*

28 *f. Shall keep and maintain proper financial and statistical rec-*
 29 *ords concerning all cases in which the public guardian provides*
 30 *guardianship or conservatorship services, provided that the privacy*
 31 *and confidentiality of these records for each ward are preserved;*

32 *g. May serve as guardian and conservator or either of these,*
 33 *after appointment by a court pursuant to the provisions of Title*
 34 *3B of the New Jersey Statutes, and with the same powers and*
 35 *duties of a private guardian or conservator, except as otherwise*
 36 *limited by law or court order;*

37 *h. May intervene in any guardianship or conservatorship pro-*
 38 *ceeding involving a ward by appropriate motion by the court, if*
 39 *the public guardian or the court deems the intervention to be justi-*
 40 *fied because an appointed guardian or conservator is not fulfilling*
 41 *his duties, the estate is subject to disproportionate waste because*
 42 *of the costs of the guardianship or conservatorship, or the best*
 43 *interests of the ward require intervention;*

44 *i. Shall perform any other function which may be prescribed by*
 45 *this act or by any other law.**

1 **[8.]* *7.* Any *[gravely disabled]* elderly person residing in*
 2 *the State who *[cannot afford to compensate a private guardian,]**
 3 **may be found by a court to require a guardian or conservator,*
 4 *and* who does not have a willing and responsible family member*
 5 *or friend to serve as guardian*[, who lacks the capacity to make*
 6 *informed decisions about proposed care, treatment, or manage-*
 7 *ment services, who is unable to manage one's financial resources,*
 8 *and who is unable to meet essential requirements for one's physical*
 9 *health and safety,]* is eligible for the services of the public guard-*
 10 *ian. *However, the public guardian shall not be appointed for the*
 11 *sole reason that the proposed ward relies upon treatment by spiri-*
 12 *tual means through prayer alone in lieu of medical treatment in*
 13 *accordance with the ward's religious tenets and practices.**

14 **[A gravely disabled elderly person, or any]* *In addition to*
 15 *the classes of persons entitled pursuant to Title 3B of the New*
 16 *Jersey Statutes, a* county welfare agency *[acting on behalf of a*
 17 *gravely disabled]* *, the ombudsman for the institutionalized*
 18 *elderly, or any other agency, public or private, having a responsi-*
 19 *bility towards the eligible* elderly person, may petition the court*
 20 *to have the public guardian appointed as *[his]* guardian or*
 21 *conservator *for the eligible elderly person* with the powers and*
 22 *duties ordinarily conferred by law on guardians and conservators*
 23 *or for certain limited purposes described in the petition. If the*
 24 *petition requests that only limited powers be granted, the court*
 25 *shall incorporate these limitations into its order of appointment*

26 **to the extent is deems appropriate**. The court shall ensure beyond
 27 a reasonable doubt that the petition is not the product of mistake,
 28 fraud, or duress. The filing of the petition will not be the basis for
 29 any inference concerning the competence of the petitioner or for
 30 any loss of civil rights or benefits.

1 ***[9.]*** **8.** a. If a public guardian is appointed guardian or
 2 conservator for ***[a gravely disabled]*** **an eligible** elderly per-
 3 son, the administrative costs of the public guardian's services and
 4 the costs incurred in the appointment procedure will not be charged
 5 against the income or the estate of the ***[gravely disabled]*** per-
 6 son, unless the court determines at any time that the person is
 7 financially able to pay all or part of these costs.

8 b. The ability of the income or estate of the ***[gravely disabled]***
 9 person to pay for administrative costs of a public guardian or costs
 10 incurred in the appointment procedure will be measured according
 11 to the person's financial ability to engage and compensate a private
 12 guardian. The ability is a variable dependent on the nature, extent,
 13 and liquidity of assets; the disposable net income of the person;
 14 the nature of the guardianship or conservatorship; the type, dura-
 15 tion, and the complexity of the services required; and any other
 16 foreseeable expenses.

17 ***[c. The public guardian shall investigate the financial status of**
 18 a person who requests the appointment of the public guardian as his
 19 guardian or for whom a court is considering the appointment of the
 20 public guardian. In connection with this investigation, the public
 21 guardian shall have the authority to require the proposed ward to
 22 execute and deliver any written requests or authorizations which
 23 may be necessary under applicable law to provide the public
 24 guardian with access to records of public or private sources, other-
 25 wise confidential, as may be needed to evaluate eligibility. The
 26 public guardian is authorized to obtain information from any public
 27 record office of the state or of any subdivision or agency thereof
 28 upon request and without payment of any fees ordinarily required
 29 by law.]*

1 ***[10. a. The initial appointment by a court of the public guard-**
 2 **ian as guardian or conservator will be for no longer than six months,**
 3 **after the court determines by clear, unequivocal, and convincing**
 4 **evidence that the proposed ward of the public guardian is gravely**
 5 **disabled; cannot afford to compensate a private guardian; does not**
 6 **have willing and responsible family members or friends to serve**
 7 **as guardian; and lacks the capacity to make informed decisions**
 8 **about proposed care, treatment, or management services; is unable**
 9 **to manage one's financial resources and is unable to meet essential**

10 requirements for one's physical health and safety and that
11 necessary services are available to protect the proposed elderly
12 ward from serious injury, illness, or disease or from gross financial
13 mismanagement or manifest financial vulnerability. Successive
14 appointments for a term no longer than one year may be made by
15 the court after the same determinations.

16 b. No later than thirty days prior to the expiration of his term as
17 guardian or conservator, the public guardian shall file with the
18 court an inventory and account in accord with the provisions of
19 N. J. S. 3B:17-3 which will be subject to examination pursuant to
20 the provisions of N. J. S. 3B:17-6. At the same time, the public
21 guardian shall file a statement setting forth facts that indicate at
22 least; (1) the present personal status of the gravely disabled per-
23 son, (2) the public guardian's plan for regaining, developing, and
24 preserving the well-being and capacity of the ward to make in-
25 formed decisions about care and treatment services, and (3) the
26 need for the continuance or discontinuance of the guardianship or
27 conservatorship or for any alteration of the powers of the public
28 guardian.

29 c. The court shall hold a hearing to determine the findings set
30 forth in subsection a. of this section concerning the appointment, or
31 renewal of the appointment of the public guardian, unless the court
32 dismisses the petition for lack of substantial grounds.

33 d. The proposed ward of the public guardian shall be present at
34 the hearing unless he is medically incapable of being present to the
35 extent that attendance is likely to cause serious and immediate
36 physiological damage to the proposed ward. A waiver for medical
37 incapability shall be determined on the basis of factual information
38 supplied to the court by counsel, including at least the affidavit or
39 certificate of a duly licensed medical practitioner.

40 e. The proposed ward of the public guardian has the right to
41 counsel whether or not the proposed ward is present at the hearing,
42 unless the right to counsel is knowingly, intelligently, and volun-
43 tarily waived by the ward. If the proposed ward cannot afford
44 counsel or lacks the capacity to waive counsel, the court shall
45 appoint counsel who will always be present at any hearing involving
46 the proposed ward. Where the proposed ward cannot afford
47 counsel, the State shall pay as reasonable attorney's fees and com-
48 pensation that is customarily charged by attorneys in this State for
49 comparable services.

50 f. The proposed ward of the public guardian shall have the right
51 to trial by jury.

52 g. The proposed ward of the public guardian has the right to

53 secure an independent medical or psychological examination or
54 both relevant to the issues involved in the hearing at the expense
55 of the State if the proposed ward is unable to afford this examina-
56 tion and to present a report of this independent evaluation or the
57 evaluator's personal testimony as evidence at the hearing.

58 h. The proposed ward at any evaluation has the right to remain
59 silent, the right to refuse to answer questions when the answers may
60 tend to incriminate the proposed ward, the right to have counsel or
61 any other mental health professional present, and the right to
62 retain the privileged and confidential nature of the evaluation for
63 all proceedings other than proceedings pursuant to this act; except
64 that, after full explanation, the proposed ward may be required to
65 submit to interviews for the purpose of ascertaining whether he
66 lacks the capacity to make informed decisions about care and treat-
67 ment services, and the proposed ward's failure to respond to ques-
68 tions relevant to that issue may be introduced as evidence of a lack
69 of this capacity. The proposed ward of the public guardian may
70 present evidence and confront and cross-examine witnesses.

71 i. The duties of counsel representing a proposed ward of the
72 public guardian at the hearing shall include at least: a personal
73 interview with the proposed ward; counseling the proposed ward
74 with respect to his rights; and arranging for an independent
75 medical psychological examination or both as provided in subsec-
76 tion g. of this section.

77 j. Except where specified otherwise, the rules of evidence and
78 rules of procedure, including those on discovery, that are applicable
79 in civil matters shall govern all proceedings under this act.

80 k. Any psychiatrist or psychologist giving testimony or reports
81 containing descriptions and opinions will be required to provide a
82 detailed explanation as to how these descriptions and opinions were
83 reached and a specification of all behaviors and other factual in-
84 formation on which these descriptions and opinions are based.
85 These witnesses shall not be permitted to give opinion testimony
86 stating the applicable diagnostic category unless the proposed ward
87 of the public guardian raises the issue through cross-examination
88 or the presentation of evidence.

89 l. The proposed ward of the public guardian is entitled, upon the
90 request of the proposed ward, to have the court and the jury, if any,
91 informed regarding the influence of any psychotropic medication
92 being taken by the proposed ward and its effect on the proposed
93 ward's actions, demeanor, and participation at the hearing.

94 m. The proposed ward of the public guardian shall have the
95 right to appeal adverse orders and judgments in the manner pre-

96 scribed in Rules Governing the Courts of the State of New Jersey,
 97 and the proposed ward shall have the right to appellate counsel,
 98 who shall be compensated as provided in subsection e. of this
 99 section.】*

1 *9. *The public guardian shall consider the religious and ethical*
 2 *beliefs of the ward when making decisions on the ward's behalf.*
 3 *The public guardian shall consider nonmedical remedial treatment*
 4 *in accordance with a recognized method of healing when this choice*
 5 *would be consistent with the beliefs held by the ward while com-*
 6 *petent.**

1 *【11.】* *10.* a. If*【, pursuant to section 10 of this act,】* it is
 2 determined that the public guardian should be appointed for a
 3 proposed ward, the court shall enter an order that makes findings
 4 of fact on the basis of clear, unequivocal, and convincing evidence
 4A supporting each grant of authority to the public guardian and that:

5 (1) establishes whether the public guardian has authority over
 6 the person, or the property, or both person and property, of the
 7 ward;

8 (2) Establishes whether, and to what extent, the authority over
 9 person or property or both is partial; and

10 (3) Sets the term of appointment*【, which shall be no longer
 11 than provided in subsection a. of section 10 of this act】*.

12 b. No grant of authority to the public guardian will be more than
 13 the least restrictive alternative warranted under the facts, and the
 14 public guardian shall employ the form of assistance that least
 15 interferes with the capacity of a ward to act in his own behalf.

16 c. There will be no liability by physicians for failure to obtain
 17 consent from a ward or proposed ward of the public guardian in an
 18 emergency that threatens death or serious bodily harm.

1 *【12. a. Each ward of the public guardian shall have the right to
 2 prompt and adequate personal and medical care, treatment, and
 3 rehabilitative services for the purposes both of meeting needs for
 4 protection from physical injury, illness, or disease and of restora-
 5 tion to the abilities to care for oneself and to make one's own in-
 6 formed decisions about care and treatment services.

7 b. In the event that the public guardian is unable to provide
 8 these services out of funds available from the ward's estate and
 9 income and other private and governmental benefits to which the
 10 ward is entitled, the public guardian or ward may petition the
 11 court for an order requiring the State through the county to
 12 provide funds that are necessary to provide services that would
 13 implement the ward's right to services. The petition shall provide
 14 complete details with regard to funds and other benefits at the

15 public guardian's disposal and justification for the necessity and
 16 appropriateness of the services for which finances are unavailable.
 17 Upon receipt of the petition, the court shall schedule the matter for
 18 a hearing within twenty days and cause the petition and notice of
 19 the hearing to be served upon the public guardian, the ward, the
 20 ward's attorney, and the Department of Human Services and the
 21 county welfare agency in the county in which the ward resides.
 22 In preparation for the hearing, the Department of Human Services
 23 and the county welfare agency in the county in which the ward
 24 resides shall have access to relevant care and treatment records of
 25 the ward. At the hearing, the burden of proof by a preponderance
 26 of the evidence will be upon the petitioning party.

27 c. At the conclusion of the hearing, the court shall enter an order
 28 dismissing the petition or requiring the Department of Human
 29 Services through the county welfare agency in the county in which
 30 the ward resides to provide the necessary funds for any services to
 31 which the ward has a right under subsection a. of this section and
 32 from which there is at least a substantial probability of significant
 33 benefit to the ward.]*

1 ***[13.]*** *11.* The public guardian may be discharged by a court
 2 with respect to any of the authority granted over each ward upon
 3 petition of the ***[gravely disabled]*** elderly person or any interested
 4 person or upon the court's own motion, when it appears that the
 5 services of the public guardian are no longer necessary.

1 ***[14. a.]** When a person is appointed to the position of public
 2 guardian, he succeeds immediately to all rights, duties, respon-
 3 sibilities, powers, and authorities of the preceding public guardian.

4 b. When the position of public guardian is vacant, subordinate
 5 personnel employed under section 6 of this act shall continue to act
 6 as if the position of public guardian was filled.

7 c. When the position of public guardian becomes vacant, a
 8 successor in office shall be appointed within forty-five days.]*

1 ***[15.]*** *12.* In any proceeding for appointment of a public
 2 guardian, or in any proceeding involving the estate of ***[a gravely]**
 3 **disabled]*** *an eligible* elderly person for whom a public guardian
 4 has been appointed conservator or guardian, the court may waive
 5 any court costs or filing fees.

1 ***[16.]** The Public Advocate shall adopt rules and regulations in
 2 accordance with the "Administrative Procedure Act," P. L. 1968,
 3 c. 410 (C. 52:14B-1 et seq.) to effectuate the purposes of this act.]*

1 ***[17.]*** *13.* There is appropriated \$200,000.00 from the ***[Ca-**
 2 **sino Revenue]*** *General* Fund ***[established under section 145**

3 of P. L. 1977, c. 110 (C. 5:12-145)]* to the *[Department of the
4 Public Advocate]* *Office of the Public Guardian within the De-*
5 *partment of Community Affairs to effectuate the purposes of this*
6 *act*.*

1 ***[18.]*** *14.* This act shall take effect on ***[January 1, 1985]***
2 *the 180th day following enactment*.*

STATEMENT

This bill establishes a "Public Guardianship Program for Elderly Adults" for senior citizens age 60 years or older, who are gravely disabled, unable to adequately care for their health or their financial resources, lacking willing and responsible family members or friends to serve as guardian, and do not have adequate income or wealth to compensate a private guardian.

This program is created in the Department of the Public Advocate and is to be independent of any service-providing agency. The Public Advocate shall appoint the program head who will be the public guardian and prepare guidelines for the program which shall include establishing program offices which are responsible for no more than 500 wards and setting caseloads for professional staff members which shall not be greater than 30 wards.

A gravely disabled elderly person, or any county welfare agency acting on behalf of a gravely disabled elderly person may petition the court for appointment of a public guardian, who shall have the same powers and duties as a private guardian or conservator. The public guardian shall employ at least one social worker and one financial manager and may employ other professional staff members necessary for the proper performance of his duties. The public guardian may contract for any necessary services, and may accept volunteer or consultant services. The public guardian may not commit a ward to a mental facility without an involuntary commitment proceeding as provided by law.

Persons who are financially able to, will bear responsibility for paying for administrative costs of a public guardian or costs incurred in the appointment procedure. Initial appointment by the court of the public guardian as guardian or conservator shall be for no more than six months, with successive appointments for no more than one year. No later than 30 days prior to the expiration of his term as guardian or conservator, the guardian shall file an inventory and account with the court, and a statement which shall include the present personal status of the ward, the public guardian's plan concerning the ward's well-being and capacity, and the need for continuance or discontinuance of the guardianship or conservator.

The court shall hold a hearing concerning the appointment or renewal of appointment of the public guardian. The proposed ward shall be present at the hearing unless he is medically incapacitated. The proposed ward has the following rights: to counsel; to trial by jury; to secure an independent medical and or psychological examination; to remain silent; to refuse to answer questions when

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the answers may incriminate him; to have counsel or any other mental health professional present; to retain confidentiality of the evaluation; to present evidence; to confront and cross-examine witnesses; and, to have the court and jury, if any, informed regarding the influence of any psychotropic medication being taken and to appeal adverse orders and judgments. The proposed ward shall also have the right to prompt and adequate personal and medical care, treatment, rehabilitative services.

If appointment of a guardian is determined by the court, the court order entered shall establish whether the public guardian has authority over the person, or the property or both; whether and to what extent this authority is partial; and the term of appointment. The grant of authority shall be no more than the least restrictive alternative warranted.

The public guardian can petition the court for an order requiring the State, through the county, to provide funds for necessary services, if funds are not available from the ward's estate and income and from other private or governmental benefits to which the ward is entitled.

The bill includes a \$200,000.00 appropriation from the Casino Revenue Fund to the Department of the Public Advocate.

ASSEMBLY COMMITTEE ON AGING

STATEMENT TO

SENATE, No. 1927

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: FEBRUARY 14, 1985

The purpose of this bill, as amended by the Senate Committee on Aging, is to create an Office of the Public Guardian for Elderly Adults to assist eligible elderly individuals by providing guardianship services to them at little or no cost when appropriate.

This bill sets forth three major requirements for eligibility to receive guardianship service from the Office of the Public Guardian as follows:

- (1) The individual must be at least 60 years of age;
- (2) The individual must be found in need of guardianship services by the Superior Court; and
- (3) The individual must have no willing and responsible family members or friends to serve as their guardians or conservators.

The bill further provides that the administrative costs of a public guardian or the costs incurred in the appointment procedure will not be charged against the eligible person's income or estate unless the court determines according to criteria established by the bill that the eligible person is financially able to pay all or part of these costs. In cases involving persons financially unable to bear these costs, the costs will be borne by the Office of the Public Guardian.

The bill allocates the Office of the Public Guardian to the Department of Community Affairs as an independent office not subject to any supervision or control by the department, or any board or officer thereof.

The provisions specified in Title 3B of the New Jersey Statutes for the appointment of guardians are applied to the appointment of the public guardian.

This bill includes an appropriation of \$200,000.00 from the General Fund to the Office of the Public Guardian to effectuate the purposes of the act.

The bill was reported out favorably from the committee.

SENATE COMMITTEE ON AGING

STATEMENT TO

SENATE, No. 1927

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 1984

With the committee amendments, this bill creates an Office of the Public Guardian for Elderly Adults to assist individuals who are at least 60 years of age, may be judged by a court to require a guardian or conservator, and have no willing and responsible family members or friends to serve as their guardians or conservators.

The Office of the Public Guardian for Elderly Adults is allocated to the Department of Community Affairs, but is independent of any supervision or control by the department. The administrator and chief executive officer of the office is the public guardian who shall be appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor. The status of the public guardian shall be similar to that of the ombudsman for the institutionalized elderly.

Anyone entitled under the provisions of Title 3B of the New Jersey Statutes (N. J. S. 3B:1-1 et seq.), a county welfare agency, the ombudsman for the institutionalized elderly, or any other public or private agency having responsibility toward an eligible elderly person may petition the court to have the public guardian appointed as guardian or conservator. The procedure for appointment of the public guardian by the court and the powers and duties of the public guardian shall be the same as those for private guardians and be governed by the provisions of Title 3B of the New Jersey Statutes (N. J. S. 3B:1-1 et seq.).

Persons who are financially able will bear responsibility for paying the administrative costs of the public guardian and the costs incurred in the appointment procedure. The court will determine whether the ward is financially able to bear all or part of these costs. If the court, determines that an individual is not able to bear the cost, the expenses will be borne by the public guardian. This bill appropriates \$200,000.00 from the general fund to the Office of the Public Guardian for Elderly Adults.

The public guardian may be discharged by a court with respect to any of the authority granted over each ward, by petition of the ward or

any interested party or upon the court's own motion, when it appears that the service of the public guardian are no longer necessary.

The committee amendments contain the following significant changes in the bill: (1) Create an independent Office of the Public Guardian for Elderly Adults allocated to the Department of Community Affairs rather than as a unit within the Department of the Public Advocate; (2) Use the provisions of Title 3B of the New Jersey Statutes for the appointment of the public guardian for an elderly person rather than a set of separate standards and procedures; (3) Appropriate money for the program from the general fund rather than from the casino revenue fund; and (4) Provide that the public guardian shall not be appointed for the sole reason that the proposed ward relies upon treatment by spiritual means through prayer alone in lieu of medical treatment in accordance with the ward's religious tenets and practices.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
SENATE, No. 1927

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

This bill establishes an Office of the Public Guardian for Elderly Adults, administratively located in the Department of Community Affairs but independent of departmental control or supervision. The head of the office is the public guardian, to be appointed by the Governor with the advice and consent of the Senate.

The function of the public guardian is to act as guardian or conservator, upon court appointment, for those elderly people (60 years or older) who require guardianship either over their person or their property, or both, but who have no willing and responsible family members or friends to serve as guardian or conservator.

Any person entitled under Title 3B of the New Jersey Statutes, a county welfare office, the ombudsman for the institutionalized elderly, or any other public or private agency having responsibility toward an eligible elderly person may petition the court to have the public guardian appointed as guardian or conservator. The procedure for court appointment of the public guardian and the powers and duties of the public guardian are the same as for private guardians and are governed by the provisions of N. J. S. 3B:1-1 et seq.

FISCAL IMPACT

The bill appropriates \$200,000.00 from the General Fund to establish and organize the Office of the Public Guardian. The bill further provides that persons who are financially able will be responsible for paying the administrative costs of public guardianship and for costs incurred in the appointment procedure. The court will determine to what degree the person is able to meet these expenses, but an inability to pay shall not deprive any eligible person of public guardianship services.
