

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3B:22-2; 52:27G-2

(Public Guardian
for the Elderly--
allow liens on
estates for
services rendered)

LAWS OF: 1989

CHAPTER: 248

Bill No: S3063

Sponsor(s): Paterniti

Date Introduced: December 12, 1988

Committee: Assembly: Senior Citizens

Senate: Aging

Amended during passage: Yes Assembly Committee Substitute
(1R) enacted

Date of Passage: Assembly: December 11, 1989

Senate: November 27, 1989

Date of Approval: January 2, 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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ASSEMBLY COMMITTEE SUBSTITUTE FOR
SENATE, No. 3063 (1R)

STATE OF NEW JERSEY

ADOPTED JUNE 26, 1989

Sponsored by Senator PATERNITI

1 AN ACT concerning the Office of the Public Guardian for Elderly
Adults, amending N.J.S.3B:22-2 and amending and
3 supplementing P.L.1985, c.298.

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

7 1. Section 2 of P.L.1985, c.298 (C.52:27G-21) is amended to
read as follows:

9 2. The Legislature finds and declares that private guardianship
for an incompetent elderly adult may not be feasible where there
11 are no willing and responsible family members or friends to serve
as guardian, that this act establishes a public guardianship
13 program for elderly adults for the purpose of furnishing
guardianship services to elderly persons at reduced or no cost
15 when appropriate, and that this act intends to promote the
general welfare by establishing a public guardianship system that
17 permits elderly persons to determinatively participate as fully as
possible in all decisions that affect them.

19 (cf: P.L.1985, c.298, s.2)

21 2. Section 6 of P.L.1985, c.298 (C.52:27G-25) is amended to
read as follows:

23 6. The public guardian, as administrator and chief executive
officer:

25 a. Shall administer and organize the work of the office and
establish therein any administrative divisions he may deem
necessary, proper and expedient. The public guardian may
27 delegate to subordinate officers or employees of the office any of
his powers as he may deem desirable to be exercised under his
supervision and control;

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

33 c. Shall appoint and remove stenographic, clerical and other

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.

1 secretarial assistants as may be required for the proper conduct
of the office, subject to the provisions of Title [11 of the
3 Revised] 11A of the New Jersey Statutes, and other applicable
statutes, and within the limits of funds appropriated or otherwise
5 made available therefor. In addition, and within funding limits,
the public guardian may appoint, retain or employ, without regard
7 to the provisions of Title [11] 11A of the New Jersey Statutes or
any other statutes, any officers, financial managers, social
9 workers or other professionally qualified personnel on a contract
basis or otherwise as the public guardian deems necessary;

11 d. Shall maintain suitable headquarters for the office and
other quarters as the public guardian may deem necessary to the
13 proper functioning of the office;

e. May accept the services of volunteer workers or consultants
15 at no compensation [or] at nominal or token compensation , or
at full compensation, as appropriate, and reimburse them for
17 their proper and necessary expenses;

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

23 g. May serve as guardian and conservator or either of these,
after appointment by a court pursuant to the provisions of Title
25 3B of the New Jersey Statutes, and with the same powers and
duties of a private guardian or conservator, except as otherwise
27 limited by law or court order;

h. May intervene in any guardianship or conservatorship
29 proceeding involving a ward, by appropriate motion by the court,
if the public guardian or the court deems the intervention to be
31 justified because an appointed guardian or conservator is not
fulfilling his duties, the estate is subject to disproportionate
33 waste because of the costs of the guardianship or
conservatorship, or the best interests of the ward require
35 intervention;

i. Shall perform any other function which may be prescribed by
37 this act or by any other law;

j. Shall appoint and employ, notwithstanding the provisions of
39 P.L.1944, c.20 (C.52:17A-1 et seq.), a general counsel and such

1 other attorneys or counsel as the public guardian may require, for
the purpose, among other things, of providing legal advice on such
3 matters as the public guardian may from time to time require, of
attending to and dealing with all litigation, controversies, and
5 legal matters in which the public guardian or any ward of the
public guardian may be a party or in which these rights and
7 interests may be involved, and of representing the public guardian
and any ward in all proceedings or actions of any kind which may
9 be brought for or against them in any court of this State. With
respect to all of the foregoing, the counsel and attorneys shall be
11 independent of any supervision or control by the Attorney
General or by the Department of Law and Public Safety, or by
13 any division or officer thereof.

(cf: P.L.1987, c.243, s.1)

15 3. Section 7 of P.L.1985, c.298 (C.52:27G-26) is amended to
read as follows:

17 7. Any elderly person residing in the State who may be found
by a court to require a guardian or conservator, pursuant to the
19 provisions of Title 3B of the New Jersey Statutes, and who does
not have a willing and responsible family member or friend to
21 serve as guardian is eligible for the services of the public
guardian. However, the public guardian shall not be appointed for
23 the sole reason that the proposed ward relies upon treatment by
spiritual means through prayer alone in lieu of medical
25 treatment, in accordance with the ward's religious tenets and
practices.

27 In addition to the classes of persons entitled pursuant to Title
3B of the New Jersey Statutes, a county welfare agency, the
29 Ombudsman for the Institutionalized Elderly, or any other
agency, public or private, having a responsibility towards the
31 eligible elderly person, may petition the court to have the public
guardian appointed as guardian or conservator for the eligible
33 elderly person with the powers and duties ordinarily conferred by
law on guardians and conservators or for certain limited purposes
35 described in the petition. If the petition requests that only
limited powers be granted, the court shall incorporate these
37 limitations into its order of appointment to the extent it deems
appropriate. The court shall ensure beyond a reasonable doubt
39 that the petition is not the product of mistake, fraud, or duress.

1 The filing of the petition will not be the basis for any inference
concerning the competence of the petitioner or for any loss of
3 civil rights or benefits.

(cf: P.L.1985, c.298, s.7)

5 4. Section 8 of P.L.1985, c.298 (C.52:27G-27) is amended to
read as follows:

7 8. a. If [a] the public guardian is appointed guardian or
conservator for an eligible elderly person, the administrative
9 costs, commissions and fees of the public guardian's services and
the costs incurred in the appointment procedure [will not] shall be
11 charged against the income or the estate of the person [, unless
the court determines at any time that the person is financially
13 able to pay all or part of these costs] pursuant to the provisions
of Title 3B of the New Jersey Statutes. The reasonable value of
15 all the services rendered by the public guardian, including the
costs incurred in the appointment procedure, less any amounts
17 paid from the income of the person, shall be charged against the
estate of the person in accordance with the provisions of section
19 6 of P.L. , c. (C.)(now pending before the Legislature as
this bill).

21 b. [The ability of the income or estate of the person to pay for
administrative costs of a public guardian or costs incurred in the
23 appointment procedure will be measured according to the
person's financial ability to engage and compensate a private
25 guardian. The ability is a variable, dependent on the nature,
extent, and liquidity of assets; the disposable net income of the
27 person; the nature of the guardianship or conservatorship; the
type, duration, and the complexity of the services required; and
29 any other foreseeable expenses.] (Deleted by amendment, P.L. ,
c. .)

31 (cf: P.L.1985, c.298, s.8)

5. Section 11 of P.L.1985, c.298 (C.52:27G-30) is amended to
33 read as follows:

11. The public guardian may be discharged by a court with
35 respect to any of the authority granted over each ward upon
petition of the elderly person [or] , any interested person, or the
37 public guardian, or upon the court's own motion, when it appears
that the services of the public guardian are no longer necessary,
39 despite the fact that the individual has not been, and may never

1 be, restored to competency.

(cf: P.L.1985, c.298, s.11)

3 6. (New section) a. The reasonable value of the services
5 rendered by the public guardian may in all cases be a lien on the
7 estate of the elderly person on whose behalf the services have
9 been rendered, pursuant to a court order appointing the public
guardian. This lien shall be deemed a preferred claim against the
estate of the elderly person and shall have a priority as a debt
under subsection c. of N.J.S.3B:22-2.

The lien may be filed against the real or personal property, or
11 an interest or estate in property, whether vested or contingent,
of a third party.

13 b. In order to effectuate a lien, the public guardian shall file a
notice with the clerk of the Superior Court in the county in which
15 the elderly person resides, setting forth the services rendered and
the reasonable value thereof. Upon the filing of the notice, the
17 lien shall immediately attach to, and become binding upon all of
the property, whether real or personal, of the estate against
19 whom the lien is filed.

(1) If the clerk finds that the estate against whom a lien is
21 filed pursuant to this act is possessed of any goods, rights,
credits, chattels, monies or effects which are held by a person,
23 firm or corporation for the present or future use of the estate,
the clerk shall forward notice of the lien by registered or
25 certified mail to that person, firm or corporation; and the lien
shall be binding upon those goods, rights, credits, chattels, monies
27 or effects. Upon receipt of notice of the lien, the person, firm or
corporation shall be precluded from disposing of those goods,
29 rights, credits, chattels, monies or effects until the lien is
satisfied or until the public guardian consents to that disposition.

31 A person, firm or corporation who disposes of those goods,
rights, credits, chattels, monies or effects after receipt of notice
33 of the lien is liable to the public guardian for the value of the
goods, rights, credits, chattels, monies or effects disposed of, or
35 the amount of the lien, whichever is less.

(2) The clerk shall provide suitable books in which he shall
37 enter a lien filed pursuant to this act and shall properly index the
lien in the name of the estate against whom the lien has been
39 filed. The public guardian shall not be required to pay filing or

1 recording fees.

3 c. The public guardian may compromise, settle or waive, in
whole or in part, a lien filed pursuant to this act. The public
guardian may discharge the lien by filing a certificate or warrant
5 with the clerk of the Superior Court in the county in which the
elderly person resides, notifying the clerk of the public
7 guardian's desire to discharge the lien.

9 7. (New section) The public guardian shall determine the
maximum caseload that the office can maintain based on the
amount of funds appropriated or otherwise made available to the
11 office. When a maximum caseload is reached, the public guardian
may decline appointment as guardian or conservator. The public
13 guardian shall establish procedures for informing each of the
assignment judges of the Superior Court when the office's
15 maximum caseload has been reached, and when the office is able
to accept additional cases.

17 8. N.J.S.3B:22-2 is amended to read as follows:

3B:22-2. Order of priority of claims when assets insufficient.
19 If the applicable assets of the estate are insufficient to pay all
claims in full, the personal representative shall make payment in
21 the following order:

- 23 a. Reasonable funeral expenses;
- b. Costs and expenses of administration;
- 25 c. Debts and taxes with preference under Federal law or the
laws of this State, including debts for the reasonable value of
services rendered to the decedent by the Office of the Public
27 Guardian for Elderly Adults;
- d. Reasonable medical and hospital expenses of the last illness
29 of the decedent, including compensation of persons attending him;
- e. Judgments entered against the decedent according to the
31 priorities of their entries respectively;
- f. All other claims.

33 No preference shall be given in the payment of any claim over
any other claim of the same class, and a claim due and payable
35 shall not be entitled to a preference over claims not due.

(cf: N.J.S.3B:22-2)

37 9. This act shall take effect immediately.

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HUMAN SERVICES

Senior Citizens

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5

Permits public guardian to collect certain costs from income or estate of senior citizen for services provided and to limit caseload.

SENATE, No. 3063
STATE OF NEW JERSEY

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INTRODUCED DECEMBER 12, 1988

By Senator PATERNITI

1 AN ACT concerning the public guardian and amending and
supplementing P.L.1985, c.298.

3

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

1. Section 8 of P.L.1985, c.298 (C.52:27G-27) is amended to
7 read as follows:

8. a. If [a] the public guardian is appointed guardian or
9 conservator for an eligible elderly person, the administrative
costs of the public guardian's services and the costs incurred in
11 the appointment procedure [will] shall not be charged against the
income [or the estate] of the person, unless the court determines
13 at any time that the person is financially able to pay all or part
of these costs. The reasonable value of all the services rendered
15 by the public guardian, including the costs incurred in the
appointment procedure, less any amounts paid from the income of
17 the person, shall be charged against the estate of the person only
in accordance with the provisions of section 2 of P.L., c.
19 (C.) (now pending before the Legislature as this
bill).

b. The ability of the income [or estate] of the person to pay
21 for administrative costs of [a] the public guardian or costs
23 incurred in the appointment procedure will be measured
according to the person's financial ability to engage and
25 compensate a private guardian. The ability is a variable,
dependent on the nature, extent, and liquidity of assets; the
27 disposable net income of the person; the nature of the
guardianship or conservatorship; the type, duration, and the
29 complexity of the services required; and any other foreseeable
expenses.

31 (cf: P.L.1985, c.298, s.8)

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.

1 2. (New section) a. The reasonable value of the services
2 rendered by the public guardian may in all cases be a lien on the
3 estate of the elderly person on whose behalf the services have
4 been rendered, pursuant to a court order appointing the public
5 guardian. This lien shall be deemed a preferred claim against the
6 estate of the elderly person and shall have a priority equivalent
7 to that under subsection d. of N.J.S.3B:22-2.

8 The lien may be filed against the real or personal property, or
9 an interest or estate in property, whether vested or contingent,
10 of a third party.

11 b. In order to effectuate a lien, the public guardian shall file a
12 notice with the clerk of the Superior Court in the county in which
13 the elderly person resides, setting forth the services rendered and
14 the reasonable value thereof. Upon the filing of the notice, the
15 lien shall immediately attach to, and become binding upon all of
16 the property, whether real or personal, of the estate against
17 whom the lien is filed.

18 (1) If the clerk finds that the estate against whom a lien is
19 filed pursuant to this act is possessed of any goods, rights,
20 credits, chattels, monies or effects which are held by a person,
21 firm or corporation for the present or future use of the estate,
22 the clerk shall forward notice of the lien by registered or
23 certified mail to that person, firm or corporation; and the lien
24 shall be binding upon those goods, rights, credits, chattels, monies
25 or effects. Upon receipt of notice of the lien, the person, firm or
26 corporation shall be precluded from disposing of those goods,
27 rights, credits, chattels, monies or effects until the lien is
28 satisfied or until the public guardian consents to that disposition.

29 A person, firm or corporation who disposes of those goods,
30 rights, credits, chattels, monies or effects after receipt of notice
31 of the lien is liable to the public guardian for the value of the
32 goods, rights, credits, chattels, monies or effects disposed, or the
33 amount of the lien, whichever is less.

34 (2) The clerk shall provide suitable books in which he shall
35 enter a lien filed pursuant to this act and shall properly index the
36 lien in the name of the estate against whom the lien has been
37 filed. The public guardian shall not be required to pay filing or
38 recording fees.

39 c. The public guardian may compromise, settle or waive, in

1 whole or in part, a lien filed pursuant to this act. The public
guardian may discharge the lien by filing a certificate or warrant
3 with the clerk of the Superior Court in the county in which the
elderly person resides, notifying the clerk of the public
5 guardian's desire to discharge the lien.

3. This act shall take effect immediately.

7

9

STATEMENT

11 This bill provides that the reasonable value of the services
rendered by the Office of the Public Guardian for Elderly Adults
13 established pursuant to P.L.1985, c.298 (C.52:27G-20 et seq.),
may in all cases be a lien on the estate of the elderly person on
15 whose behalf the services have been rendered, pursuant to a court
order appointing the public guardian. This lien shall be deemed a
17 preferred claim against the estate of the elderly person and shall
have a priority equivalent to that under subsection d. of
19 N.J.S.3B:22-2. The bill provides further that the lien may be
filed against the real or personal property, or an interest or
21 estate in property, whether vested or contingent, of a third party.

23

HUMAN SERVICES

25

Senior Citizens

27 Permits lien on estate of recipient of public guardian services.

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ASSEMBLY SENIOR CITIZENS COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

SENATE, No. 3063 (1R)

STATE OF NEW JERSEY

DATED: JUNE 26, 1989

The Assembly Senior Citizens Committee favorably reports an Assembly Committee Substitute for Senate Bill No. 3063(1R).

This substitute amends the "Public Guardian for Elderly Adults Act," P.L.1985, c.298 (C.52:27G-20 et seq.). The substitute is intended to provide the public guardian with means to administer the office more efficiently and effectively.

The substitute provides that it is the Legislature's intention that the public guardian should only be appointed in those cases in which the senior citizen is incompetent.

The substitute provides that the public guardian may provide full compensation to consultants that the office must engage. It also clarifies that a court shall apply the same provisions of Title 3B of the New Jersey Statutes to the appointment of the public guardian as it applies to the appointment of any other guardian.

Under the provisions of the substitute, the public guardian may charge the income or estate of the senior citizen for whom he is appointed guardian, with the administrative costs, commissions and fees of his services, pursuant to the provisions of Title 3B of the New Jersey Statutes.

The public guardian may petition the court to be discharged from the authority over the senior citizen, if the services of the public guardian are no longer necessary. The fact that the senior citizen may not be competent at the time of the petition and may never be competent could not be used to deny the public guardian's petition.

The substitute also provides for a lien on the estate of the senior citizen on whose behalf the services of the public guardian have been rendered. The lien will be deemed a preferred claim against the estate of the senior citizen and will have a priority as a debt under subsection c. of N.J.S.3B:22-2. In addition, N.J.S.3B:22-2 is amended to specifically mention the public guardian and the priority of his claim against the assets of the senior citizen.

The substitute provides that the public guardian shall determine the maximum number of cases the office can maintain based on the amount of funds appropriated or otherwise made available to the office. When a maximum caseload is reached, the public guardian may decline appointment as guardian or conservator. The public guardian shall establish procedures for informing each of the assignment judges of the Superior Court when the office's maximum caseload has been reached, and when the office is able to accept additional cases.

This substitute is identical to Assembly Bill No. 4752 which was amended and released by the Assembly Senior Citizens Committee on 6/26/89.

SENATE COMMITTEE ON AGING

STATEMENT TO

SENATE, No. 3063

with Senate committee amendments

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STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1989

The Senate Committee on Aging favorably reports Senate Bill No. 3063 with committee amendments.

As amended, this bill provides that the reasonable value of the services rendered by the Office of the Public Guardian for Elderly Adults established pursuant to P.L.1985, c.298 (C.52:27G-20 et seq.), may in all cases be a lien on the estate of the elderly person on whose behalf the services have been rendered, pursuant to a court order appointing the public guardian. This lien shall be deemed a preferred claim against the estate of the elderly person and shall have a priority as a debt under subsection c. of N.J.S.3B:22-2. The bill provides further that the lien may be filed against the real or personal property, or an interest or estate in property, whether vested or contingent, of a third party.

The committee adopted amendments to change the priority of the public guardian's lien as a preferred claim against the senior citizen's estate from equivalent to that of subsection d. of N.J.S.3B:22-2, which includes medical and hospital expenses, to that of subsection c., which includes debts and taxes. Amendments were also made to N.J.S.3B:22-2 to specifically mention the public guardian and the priority of their claim against the assets of the senior citizen.