

104TH CONGRESS
1ST SESSION

S. 430

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 30), 1995

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guardianship Rights
5 and Responsibilities Act of 1995”.

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

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

6 (1) in paragraph (61), by striking “and” at the
7 end;

8 (2) in paragraph (62), by striking the period
9 and inserting “; and”; and

10 (3) by inserting after paragraph (62) the fol-
11 lowing new paragraph:

12 “(63) not later than 2 years after the date of
13 the enactment of this paragraph, provide assurances
14 that the State has adopted, and assumed responsibil-
15 ity for enforcing, laws relating to guardianship
16 which meet the requirements of section 1931.”.

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

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

1 the requirements of section 1931 on or before the expira-
2 tion of the 2-year period beginning on the date of the en-
3 actment of this subsection.

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

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

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

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

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

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

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

4 (1) by redesignating section 1931 as section
5 1932; and

6 (2) by inserting after section 1930 the following
7 new section:

8 “REQUIREMENTS FOR STATE GUARDIANSHIP LAWS

9 “SEC. 1931. (a) IN GENERAL.—For purposes of sec-
10 tions 1902(a)(63) and 1903(x), a State has adopted laws
11 relating to guardianship which meet the requirements of
12 this section if the State has adopted laws (or issued regu-
13 lations) which—

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

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

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

23 “(1) each individual in the State who is the
24 subject of a guardianship petition shall be provided
25 with an adequate and timely notice, in large print
26 and plain language, of all pending guardianship pro-

1 proceedings, including a copy of the guardianship peti-
2 tion, a clear description of such proceedings and of
3 all rights afforded such individual in the course of
4 such proceedings, and a summary of the possible
5 consequences of a determination of incapacity (or, in
6 the case of a blind or illiterate individual, an oral de-
7 scription of such rights and information);

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

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

23 “(4) each individual in the State who is the
24 subject of a guardianship petition has the right to

1 have the question of incapacity heard by a jury upon
2 request; and

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

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

15 “(1) unless—

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

19 “(B) the court determines, on the basis of
20 information provided by a physician, social
21 worker, or other person trained to work with
22 the elderly, the developmentally disabled, or the
23 mentally retarded (whichever is appropriate in
24 the case of a particular individual), that such
25 individual has knowingly and voluntarily waived

1 the right to be present at the hearing or cannot
2 be present because of physical incapacity; and

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

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

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

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

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

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

24 “(e) EFFECT OF DETERMINATION OF INCAPACITY.—
25 The laws of the State shall provide that a determination

1 of incapacity in a guardianship hearing in the State shall
2 not be considered prima facie evidence that the individual
3 in question is insane or is unable to function in a non-
4 institutionalized setting.

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

7 “(1) each ward in the State shall, when fea-
8 sible, have the personal preferences of such ward
9 taken into account by the court in the appointment
10 of a guardian; and

11 “(2) during the period of guardianship, each
12 ward in the State shall be entitled to participate in
13 all decisions affecting such ward to the maximum
14 extent possible commensurate with such ward’s func-
15 tional limitations, and shall retain all rights not or-
16 dered by the court to be transferred to the guardian.

17 “(g) STANDARDS FOR GUARDIANSHIPS.—The laws of
18 the State shall provide that each guardianship imposed in
19 the State shall be imposed on the ward in the least restric-
20 tive manner commensurate with the ward’s functional
21 limitations.

22 “(h) STANDARDS FOR APPOINTMENT OF GUARD-
23 IANS.—The laws of the State shall provide that—

24 “(1) no individual may be appointed to serve as
25 a guardian in the State unless the individual cer-

1 tifies that such individual has completed, or agrees
2 to enroll in and complete, a program of court-supervised
3 training in the legal, economic, and
4 psychosocial needs of wards, based upon standards
5 developed by the chief executive officer of the State;

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

10 “(3) no individual who has been convicted of a
11 felony may be appointed to serve as a guardian in
12 the State unless the court determines that an excep-
13 tion to such prohibition is appropriate in a particu-
14 lar case; and

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

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

22 “(B) a plan for meeting the ward’s finan-
23 cial, medical, and other remedial needs; and

1 “(C) provisions for maintaining contact be-
2 tween the ward and the ward’s family and
3 friends.

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

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

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

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

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

17 “(2) each guardian in the State may use funds
18 from the estate of the ward over whose affairs the
19 guardian has control only for the administration of
20 the guardianship and the benefit of the ward, and
21 shall repay to the ward’s estate any funds used by
22 such guardian for any purpose determined to be im-
23 proper by the court which issued the order giving
24 such guardian control over such ward’s affairs; and

1 “(3) each guardian in the State shall keep the
2 court which issued the order giving such guardian
3 control over the ward’s affairs informed of the
4 whereabouts of such ward, and shall notify such
5 court whenever such ward is moved to a new resi-
6 dence.

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

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

18 “(2) upon receiving notice from a court in an-
19 other State that a ward subject to a guardianship
20 order has been moved into the State, a court in the
21 State shall assume jurisdiction over such guardian-
22 ship, and may require the guardian to submit a new
23 petition for guardianship or any other supple-
24 mentary information to enable the court to exercise
25 such jurisdiction.

1 “(k) COURT REVIEW OF GUARDIANSHIP ORDERS.—
2 The laws of the State shall provide that each court in the
3 State which issues a guardianship order shall conduct an
4 annual review of the guardianship to determine whether
5 the guardian is performing the guardian’s duties in ac-
6 cordance with the appropriate laws and whether the
7 guardianship should be continued, modified, or termi-
8 nated.

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

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

17 “(1) the term ‘guardian’—

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

21 “(i) is 18 years or older; and

22 “(ii) has been determined to be in-
23 capable of administering such individual’s
24 own affairs; but

25 “(B) does not include a guardian ad litem;

1 “(2) the term ‘guardianship’—

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

6 “(B) does not include a guardianship ad
7 litem; and

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

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

12 “(B) placed by a court under the care of
13 a guardian.”.

14 **SEC. 3. DEMONSTRATION GRANTS FOR GUARDIANSHIP AD-**
15 **VOCATE PROGRAMS.**

16 (a) IN GENERAL.—The Secretary of Health and
17 Human Services (in this section referred to as the “Sec-
18 retary”) shall award 2-year demonstration grants to eligi-
19 ble States (as determined under subsection (c)) for the
20 establishment and operation of guardianship advocate pro-
21 grams, including the hiring and training of individuals to
22 serve as guardianship advocates and investigators in such
23 programs.

24 (b) DUTIES OF ADVOCATES AND INVESTIGATORS.—
25 Individuals hired and trained to serve as guardianship ad-

1 vocates and investigators with funds provided under sub-
2 section (a) shall serve as employees of the courts within
3 the State which conduct guardianship hearings and issue
4 determinations of incapacity and guardianship orders, and
5 shall provide information and services to wards and to in-
6 dividuals who are the subjects of guardianship petitions,
7 including—

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

10 (2) notifying such individuals of their rights
11 under State guardianship law;

12 (3) monitoring wards and guardians and notify-
13 ing the court of possible violations of State guard-
14 ianship law;

15 (4) investigating complaints of improper con-
16 duct made against guardians;

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

19 (6) evaluating reports from guardians;

20 (7) performing other services to assist the
21 courts in conducting and monitoring guardianships;
22 and

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

1 (c) ELIGIBILITY.—A State shall be eligible to receive
2 a grant under subsection (a) if it submits an application
3 to the Secretary at such time, in such form, and contain-
4 ing such information and assurances as the Secretary may
5 require, including an assurance that the State shall pre-
6 pare and submit to the Secretary an evaluation of each
7 program in such State funded with a grant received under
8 subsection (a).

9 (d) PREFERENCE TO SELF-FINANCING PROGRAMS.—
10 In awarding grants under subsection (a), the Secretary
11 shall give preference to those States which provide assur-
12 ances to the Secretary that the program funded with such
13 a grant will, without Federal financial assistance, continue
14 to operate after the expiration of such grant.

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

18 (1) describing the programs funded with such
19 grants;

20 (2) evaluating the effect of such programs on
21 the guardianship process and on the protection of
22 the rights of wards and individuals subject to guard-
23 ianship petitions; and

1 (3) containing recommendations on the desir-
2 ability of continuing the funding of such programs
3 on a permanent basis.

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated \$5,000,000 for grants
6 under subsection (a).

7 (g) DEFINITION.—In this section, the term “State”
8 means each of the 50 States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Virgin Islands, and
10 Guam.

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