

SENATE No. 108

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing guardians as providers of medical care to support the rights of incapacitated persons.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|-----------------------|-----------------------|-----------------|
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | |
| <i>Vanna Howard</i> | <i>17th Middlesex</i> | <i>2/8/2023</i> |

SENATE No. 108

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 108) of Joan B. Lovely and Vanna Howard for legislation to establish guardians as providers of medical care to support the rights of incapacitated persons. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 127 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing guardians as providers of medical care to support the rights of incapacitated persons.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8 of chapter 118E of the General Laws is hereby amended by
2 striking out paragraph (f) and inserting in place thereof the following paragraph:-

3 “Provider”, includes any institution, agency, individual or other legal entity (i) qualified
4 under the laws of the commonwealth to perform the medical care or services for which medical
5 assistance and medical benefits are available under this chapter or (ii) that is duly appointed (or
6 recognized, if appointed elsewhere) under the laws of the commonwealth as guardian of a
7 member who is eligible for medical assistance under this chapter while engaged in activities that
8 are reasonably related to consenting or gaining access to medical care or services for the
9 member. Provided, however, that no person who is a spouse, parent, grandparent, child,

10 grandchild or sibling of the member (hereinafter, an “immediate family relationship”) shall be
11 included in the definition of Provider herein.

12 SECTION 2. Section 13C of chapter 118E of the General Laws is hereby amended by
13 striking out the second paragraph and inserting in its place the following paragraph:-

14 The secretary of the executive office shall establish rates of payment for social service
15 programs which are reasonable and adequate to meet the costs which are incurred by efficiently
16 and economically operated social service program providers in providing social service programs
17 in conformity with federal and state law, regulations and quality and safety standards; provided,
18 that the secretary may designate another governmental unit to perform such ratemaking
19 functions. When establishing rates of payment for social service programs and guardians, the
20 secretary of the executive office shall adjust rates to take into account factors, including, but not
21 limited to: (i) the reasonable cost to social service program providers or guardians of any existing
22 or new governmental mandate that has been enacted, promulgated or imposed by any branch of
23 government, governmental unit or federal governmental authority; (ii) rates customarily charged
24 by professional guardians in the region of the commonwealth; (iii) a cost adjustment factor to
25 reflect changes in reasonable costs of goods and services of social service programs including
26 those attributed to inflation; and (iv) geographic differences in wages, benefits, housing and real
27 estate costs in each metropolitan statistical area of the commonwealth and in any city or town
28 therein where such costs are substantially higher than the average cost within that area as a
29 whole. The secretary of the executive office shall not consider any of the resources specified in
30 section 13G when establishing, reviewing or approving rate of payment for social service
31 programs.

32 SECTION 3. Section 13D of chapter 118E of the General Laws is hereby amended by
33 inserting the following paragraph after the seventh paragraph:

34 In establishing rates for medically-related services for which a guardian is considered a
35 “Provider” under section 8 of this chapter, the secretary of the executive office shall determine
36 hourly or fee-for-service rates for professional guardians by considering the rates customarily
37 charged by professional guardians in the region of the commonwealth.

38 SECTION 4. Section 35 of chapter 118E of the General Law is hereby amended by
39 striking the first paragraph and inserting in place thereof the following paragraph:-

40 No claim for medical care or services provided for under this chapter shall be reimbursed
41 if any health insurance company, non-profit hospital service corporation, medical service
42 corporation, or other health insurer is liable for such claim under the terms of a group or
43 individual policy providing coverage for such claim to a person eligible for assistance under this
44 chapter; in the case of a guardian, no claim for care or services shall be reimbursed if any
45 department of the state or federal judiciary is liable for such claim. The division shall establish
46 procedures to ensure that no such unauthorized claims are paid, including the soliciting of
47 information regarding alternative health coverage from all applicants and recipients.

48 SECTION 5. Said section 36 of chapter 118E of the General Law is hereby further
49 amended by inserting after paragraph (5) the following paragraph:-

50 A claim submitted by a guardian that is paid for under this chapter shall be disclosed to
51 the court that has appointed the guardian as part of the guardian’s annual report to the court;
52 provided, however, that prior or subsequent judicial approval shall not be a condition or required

53 as evidence of entitlement for reimbursement of any claim by a guardian that is submitted for
54 services provided for under this chapter.

55 SECTION 6. Section 36 of chapter 118E of the General Laws is hereby amended by
56 striking paragraph (1) and inserting in place thereof the following paragraph:

57 (1) indicate their intention to the division to so participate; provided that renewal of such
58 indication of intention by a guardian shall not be required more often than once every 12 months;

59 SECTION 7. Section 36 of chapter 118E of the General Law is hereby amended by
60 striking paragraph (2) and inserting in place thereof the following paragraph:-

61 (2) present evidence, satisfactory to the division, of their qualifications to provide such
62 services. For guardians, satisfactory evidence of qualification shall consist of (i) a certificate of
63 appointment dated within one year of the request for payment and a sworn statement of its
64 validity on the dates of service; and (ii) affidavit of no immediate family relationship with the
65 member.