

HOUSE No. 1922

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Establishing A Public Guardianship Commission.

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. Chapter 10 of the General Laws, as appearing in the 2000 Official Edition,
2 is hereby amended by inserting after section 35T the following new section: --

3 SECTION 35U. There shall be established and set up on the books of the commonwealth
4 a separate fund to be known as the Public Guardianship Commission Fund, to be used to meet
5 the operational costs of the public guardianship commission established under the provisions of
6 chapter 221D, in addition to any appropriation from the General Fund. Said fund shall consist of
7 amounts received from public and private sources as gifts, grants, donations, bequests and
8 devises of money any amounts to be received by said commission in fees for services pursuant to
9 sections 5 and 6 of chapter 221D. All revenues created under this section shall remain in said
10 Public Guardianship Commission Fund, subject to appropriation, to meet the operational costs of
11 said commission. All monies, as determined by the comptroller, remaining in the Public
12 Guardianship Commission Fund, in excess of appropriations from the fund for the fiscal year
13 then ending, shall on June thirtieth of each year be transferred by the treasurer to the General
14 Fund unless the general court otherwise provides.

15 SECTION 2. Subsection (a) of section 6 of chapter 201 of the General Laws, as
16 appearing in the 2000 Official Edition, is hereby amended by striking out the first sentence and
17 inserting in place thereof the following sentence: -- A parent of a mentally ill person, two or
18 more relatives or friends of a mentally ill person, a nonprofit corporation organized under the
19 laws of the commonwealth whose corporate charter authorizes the corporation to act as a
20 guardian of a mentally ill person, the public guardianship commission or any agency with which
21 it contracts for guardianship or conservatorship services or any agency within the executive
22 offices of health and human services or educational affairs may file a petition in the probate court
23 asking to have a guardian appointed for such mentally ill person and if, after notice as provided
24 in section seven and a hearing, the court finds that he is incapable of taking care of himself by
25 reason of mental illness, it shall appoint a guardian of his person and estate.

26 SECTION 3. Subsection (a) of section 6A of said chapter 201, as appearing in the 2000
27 Official Edition, is hereby amended by striking out the first sentence and inserting in place
28 thereof the following sentence: -- A parent of a mentally retarded person, two or more relatives
29 or friends of a mentally retarded person, a nonprofit corporation organized under the laws of the
30 commonwealth whose corporate charter authorizes the corporation to act as a guardian of a
31 mentally retarded person, the public guardianship commission or any agency with which it
32 contracts for guardianship or conservatorship services or any agency within the executive offices
33 of health and human services or educational affairs may file a petition in the probate court asking
34 to have a guardian appointed for such mentally retarded person.

35 SECTION 4. Section 7 of said chapter 201 of the General Laws, as appearing in the
36 2000 Official Edition, is hereby amended by striking out the first sentence and inserting in place
37 thereof the following sentence: -- Upon such petition the court shall cause not less than seven

38 days notice of the time and place appointed for the hearing to be given to the alleged mentally ill
39 or mentally retarded person, to the public guardianship commission if it or one of the agencies
40 with which it contracts for fiduciary services is nominated, to the department of mental health in
41 the case of a petition filed pursuant to section six, or the department of mental retardation in the
42 case of a petition filed pursuant to section six A, and, if the alleged mentally ill or mentally
43 retarded person is entitled to any benefit, estate or income paid or payable through the United
44 States veterans' bureau or its successor, to said bureau or its successor, except that the court may,
45 for cause shown, direct that a shorter notice be given.

46 SECTION 5. Subsection (a) of section 14 of said chapter 201 of the General Laws, as
47 appearing in the 2000 Official Edition, is hereby amended by striking out the first sentence and
48 inserting in place thereof the following sentence: -- Upon the petition of any agency within the
49 executive offices of health and human services or educational affairs, the public guardianship
50 commission or any agency with which it contracts for guardianship or conservatorship services
51 or other person in interest, the court may, if it finds that the welfare of a minor, a mentally ill or
52 mentally retarded person, or person unable to make or communicate informed decisions due to
53 physical incapacity or illness or spendthrift requires the immediate appointment of a temporary
54 guardian of his person and estate, appoint a temporary guardian of such minor, mentally ill or
55 mentally retarded person or spendthrift, with or without notice, and may in like manner remove
56 or discharge him or terminate the trust; or in the absence or a person to serve as temporary
57 guardian, the court by order or decree may authorize and monitor, as appropriate, medical
58 treatment; provided, however, that if the court makes the findings required in paragraph (c), it
59 shall authorize treatment with antipsychotic medication and shall, in the absence of a person to

60 serve as temporary guardian, appoint a suitable person to monitor the treatment process to ensure
61 that the treatment plan approved by the court is followed.

62 SECTION 6. Said chapter 201 of the General Laws is hereby amended by striking out
63 section 16, as appearing in the 2000 Official Edition, and inserting in place thereof the following
64 section:-

65 Section 16. If a person by reason of mental weakness is unable to properly care for his
66 property, the probate court may, upon his petition or upon the petition of one or more of his
67 friends, or of the public guardianship commission or any agency with which it contracts for
68 guardianship or conservatorship services, or if a person by reason of physical incapacity is
69 unable to properly care for his property, the probate court may, upon his petition or with his
70 written assent, and in each case if after notice as provided in section seventeen and after hearing
71 it appears that such person is incapable of properly caring for his property, appoint a conservator
72 to have charge and management of his property, subject to the direction of the court.

73 SECTION 7. Section 16B of said chapter 201 as appearing in the 2000 Official Edition,
74 is hereby amended by striking out the first sentence and inserting in place thereof the following
75 sentence: -- A parent of a mentally retarded person, two or more of his relatives or friends, a
76 nonprofit corporation organized under the laws of the commonwealth whose corporate charter
77 authorizes the corporation to act as a conservator of a mentally retarded person, the public
78 guardianship commission or any agency with which it contracts for guardianship or
79 conservatorship services or any agency within the executive offices of health and human services
80 may file a petition in the probate court asking to have a conservator appointed for such mentally
81 retarded person.

82 SECTION 8. Section 21 of said chapter 201, as appearing in the 2000 Official Edition,
83 is hereby amended by striking out the first sentence and inserting in place thereof the following
84 sentence: -- Upon the petition of a person of mental weakness or of a friend or upon the petition
85 of the department of transitional assistance, of the public guardianship commission or any
86 agency with which it contracts for guardianship or conservatorship services or upon the petition
87 or with the written assent of a person who by reason of physical incapacity is unable to properly
88 care for his property, the probate court may, if it finds that the welfare of the person of mental
89 weakness or physical incapacity requires the immediate appointment of a temporary conservator
90 of his property, appoint such temporary conservator, with or without notice, and may in like
91 manner remove or discharge him or terminate his trust.

92 SECTION 9. The General Laws are hereby amended by inserting after chapter 221C, as
93 appearing in the 2000 Official Edition, the following chapter: --

94 CHAPTER 221D.

95 PUBLIC GUARDIANSHIP COMMISSION

96 SECTION 1. (a) There is established under the general superintendence of the supreme
97 judicial court a commission to be known as the public guardianship commission, composed of
98 nine members who shall be appointed by the members of the said court. One member shall be
99 nominated by the chief judge of the probate and family court department for the purpose of
100 representing that court on the commission; at least one member shall be a person with a
101 disability; at least one member shall be a person who is more than sixty years old; at least one
102 member shall be a representative of an organization whose primary purpose is to advocate for
103 persons with disabilities; at least one member shall be a representative of an organization whose

104 primary purpose is to advocate for elderly persons; and at least one member shall be
105 representative of elderly or other human service providers.

106 (b) Members of the commission shall serve for terms of five years, except that
107 the original terms of membership shall be one one-year term; two two-year terms; two three-year
108 terms; two four-year terms; and two five-year terms. No person shall be appointed to more than
109 two consecutive terms on the commission.

110 (c) No less than thirty days prior to making any appointment to the
111 commission, the justices of the supreme judicial court shall give public notice that a vacancy on
112 the commission exists and shall give interested persons an opportunity to advise regarding the
113 appointments.

114 (d) Any vacancy occurring on the commission shall be filled within ninety days
115 by the justices. A person appointed to fill a vacancy occurring other than by expiration of a term
116 of office shall be appointed for the unexpired term of the member he succeeds, and shall be
117 eligible for appointment to one full five-year term.

118 (e) The commission shall elect from among its members a chairperson and any
119 other officers it deems necessary.

120 (f) Five members of the commission shall constitute a quorum and five
121 affirmative votes shall be required for any action or recommendation of the commission. The
122 chairperson or any five members of the commission may call a meeting. Advance notice of all
123 meetings shall be given to each member of the commission and to any other person who requests
124 such notice.

125 (g) Members of the commission shall not be compensated for work performed
126 for the commission, but they shall be reimbursed for their actual and necessary expenses.

127 (h) Within three months after the appointment of the first executive director,
128 and at least every other year thereafter, the commission shall set priorities for service delivery.
129 Prior to adopting a principal service delivery mode, the commission shall publicly solicit and
130 take into consideration the views of clients, family members, advocates, providers of fiduciary
131 services, affected government officials and others concerned with the plight of persons in need of
132 such services. In order to establish a decentralized delivery system, the commission shall
133 consider promotion and support of delivery of fiduciary services by local, non-profit
134 organizations and encourage educational services and support to such families and friends of
135 persons in need of fiduciary services as are willing and, with assistance, able to provide such
136 services on a voluntary basis.

137 (i) The commission shall regularly report to the joint committee on human
138 services and elderly affairs and to the house and senate committees on ways and means of the
139 general court and to the justices of the supreme judicial court. The commission shall make its
140 first report one year from the date this section takes effect and thereafter annually on the last day
141 of July (except if such would be within six months of its first report), detailing (1) its priorities
142 for service delivery and the reasons therefore; (2) the actions it has taken during the preceding
143 year, including the number of persons served and the types of services provided to such persons;
144 (3) a description of all funds, including state appropriations and other assistance received by the
145 commission; (4) the names, duties and salaries of all individuals in its employ; (5) the money it
146 has disbursed and any savings to the commonwealth which its services have produced; (6) a
147 determination of the feasibility of utilizing volunteers to assist the commission in the delivery of

148 services; and (7) a detailed plan and cost estimate for any recommended expansion of the
149 service, including any savings to the commonwealth which such expansion might reasonably be
150 expected to produce.

151 SECTION 2. (a) The policies and standards contained in this section shall be adopted
152 and implemented by the commission through its rules and regulations, selection of and contracts
153 with individuals and agencies to act as fiduciary or provide fiduciary services, decisions
154 regarding persons being served or to be served by the commission, and other such ways as the
155 commission may determine.

156 (b) A guardianship, conservatorship or other fiduciary relationship shall be
157 established only when necessary to meet the needs of the incapacitated person and when such
158 needs cannot be satisfied using a less restrictive alternative.

159 (c) Each such fiduciary relationship shall be established and structured so that
160 the incapacitated person is allowed to make his or her own decisions to the maximum extent
161 possible.

162 (d) A guardian, conservator or other fiduciary shall exercise authority only as
163 necessitated by the incapacitated person's mental and adaptive limitations, and to, the extent
164 possible, shall encourage the incapacitated person to participate in decisions, to act on his or her
165 own behalf and to develop or regain the capacity to manage personal affairs. A guardian,
166 conservator or other fiduciary shall consider the expressed desires and personal values of the
167 incapacitated person when making decisions and shall otherwise act in the incapacitated person's
168 best interest and exercise reasonable care, diligence and prudence. It shall be assumed until

169 demonstrated otherwise that such incapacitated person would choose to live in the least
170 restrictive appropriate environment.

171 (e) With respect to each ward or proposed ward for whom the commission, or
172 any individual or agency with whom or with which it contracts for fiduciary services, is
173 responsible, the commission shall establish standards and procedures, and, subject to
174 appropriation, bear the expenses, to ensure that:

175 (1) the ward will understand, to the maximum extent feasible, the nature
176 and significance of any court proceedings;

177 (2) independent counsel is, to the extent necessary, made available to
178 him or her for all court proceedings, or, when he or she so requests, in order to petition for
179 discharge or removal of a guardian or other fiduciary;

180 (3) the commission shall immediately notify the court if the incapacitated
181 person's condition is changed so that he or she is capable of exercising rights previously limited;
182 and the commission shall cause an independent clinical review to be made at least annually to
183 determine whether any fiduciary relationship created is still necessary, and if it is not necessary,
184 that steps are taken to discharge the fiduciary;

185 (4) an annual accounting is made as required by procedures of the
186 probate and family court department; and

187 (5) there is adequate monitoring and review of the quality of fiduciary
188 services and of compliance with the policies, standards and procedures of the commission.

189 SECTION 3. (a) The commission shall, subject to appropriation, employ an executive
190 director who shall be authorized to appoint such other staff, subject to appropriation, necessary to
191 carry out the commission's duties pursuant to this chapter and chapter two hundred and one. The
192 staff shall serve at the pleasure of the commission and shall not be subject to the provisions of
193 chapter thirty-one or section nine A of chapter thirty. The executive director shall be responsible
194 for the administrative operation of the commission and shall perform such other tasks as the
195 commission may determine. The commission may employ, subject to appropriation, the services
196 of experts and consultants necessary to carry out its duties and may also accept the services of
197 volunteers, who may be reimbursed for their actual and necessary expenses incurred in carrying
198 out their duties.

199 (b) The commission, pursuant to the provisions of section two of chapter thirty A,
200 shall adopt such rules and regulations as are necessary to carry out the purposes of this chapter.

201 (c) The commission shall be subject to all laws and regulations governing the
202 procurement by state agencies and commissions of supplies, services or construction.

203 SECTION 4. (a) Any resident of the commonwealth who is indigent (as defined in
204 section twenty-seven A of chapter two hundred and sixty-one) and who is an incapacitated
205 person for whom no other qualified person or organization is available and willing to accept
206 appointment as guardian, conservator or other fiduciary, shall be eligible for the services of the
207 commission.

208 (b) A court or other appointing authority shall not appoint as guardian,
209 conservator or other fiduciary either the commission or any agency or individual contracting
210 with the commission unless the court or other appointing authority first determines that no other

211 qualified person or organization is available and willing to accept the appointment. In addition,
212 in any case involving a minor, the court or other appointing authority shall not appoint as
213 guardian, conservator or other fiduciary either the commission or any agency or individual
214 contracting with the commission unless the court or other appointing authority first determines
215 that responsibility for the minor cannot be accepted by the department of social services pursuant
216 to chapter one hundred and nineteen. No court or other appointing authority shall appoint either
217 the commission or any agency or individual contracting with the commission as guardian,
218 conservator or other fiduciary of any eligible person unless the commission or the agency or
219 individual contracting with the commission first determines, in accordance with this chapter and
220 rules and regulations of the commission, and communicates with the court, that it, he or she has
221 the capacity to provide high-quality fiduciary services and can otherwise carry out the
222 responsibilities under such appointment; and any appointment in violation of this provision shall
223 be void.

224 SECTION 5. (a) The commission may, subject to appropriation, contract with non-profit
225 private agencies and individuals to serve as the guardian, conservator or other fiduciary or to
226 provide guardianship, conservatorship or other fiduciary services to any individual for whom the
227 commission has been or might be appointed such fiduciary; provided, however, that no such
228 contract shall be entered into with a non-profit private agency unless the articles of incorporation
229 of the agency authorize it to serve in such fiduciary capacity. Any such non-profit private
230 agency or individual with which or with whom the commission so contracts shall in this section
231 and in sections 6 and 7, be referred to as a "fiduciary agency."

232 (b) The commission or any fiduciary agency may serve as a plenary, limited or
233 temporary guardian, guardian ad litem, conservator or monitor after appointment by a court

234 pursuant to the law of the commonwealth, including but not limited to chapters nineteen A, one
235 hundred and nineteen, one hundred and twenty-three, one hundred and twenty-three B and two
236 hundred and one.

237 (c) The commission or any fiduciary agency may petition the court for
238 appointment as guardian, guardian ad litem, or conservator. Any other petitioner for
239 guardianship or conservatorship after preliminary investigation by, and approval of, the
240 commission or fiduciary agency, as the case may be, may nominate the commission or such
241 fiduciary agency as a guardian, guardian-ad-litem or conservator, with notice to the commission
242 or fiduciary agency in accordance with chapter two hundred and one.

243 (d) The commission or any fiduciary agency may serve as trustee or other
244 fiduciary, except an administrator or executor of an estate. Before serving as a trustee or
245 fiduciary, the commission or fiduciary agency must receive court approval, except as provided in
246 subsection (e).

247 (e) The commission or any fiduciary agency may serve as representative payee
248 by appointment of the appropriate federal agency without court review or approval. A
249 representative payee shall be considered a fiduciary for purposes of this chapter.

250 (f) The commission or any fiduciary agency, on its own motion or at the request
251 of the court, may petition to intervene at any time in a guardianship or conservatorship
252 proceeding to protect the best interests of the proposed ward.

253 (g) The commission or any fiduciary agency may provide information and
254 assistance pertaining to guardianship, conservatorship and other fiduciary services, and may
255 perform such other tasks as may be necessary to carry out its responsibilities under this chapter.

256 (h) The commission or any fiduciary agency shall maintain records of each case
257 in which the commission or fiduciary agency provides guardianship, conservatorship or other
258 fiduciary services. Each such case record shall include the financial and personal information
259 necessary for the commission or fiduciary agency to carry out its fiduciary responsibilities. Such
260 records shall be the property of the commission. Access to such records shall be limited to
261 members and staff of the commission, to staff of the agency serving as the fiduciary of the
262 subject of a particular record and to others pursuant to an order of a court of competent
263 jurisdiction; provided, however, that authorized agents of the commonwealth, for auditing
264 purposes, shall be afforded access to such records, with information which may be used to
265 identify the subject redacted.

266 (i) The commission shall be eligible for and shall have the authority to accept
267 any and all donations, grants, appropriations, bequests and devises of money, property, personnel
268 services or other assistance which may be received from the commonwealth or any agency
269 thereof, the United States or any agency thereof, and other governmental agency, any institution,
270 person, firm or corporation, public or private; to be held, used or applied for any or all purposes
271 specified in this chapter. No such assistance shall in any way compromise or limit the
272 independence and autonomy of the commission or its authority to carry out the purposes of this
273 chapter. Any funds received by the commission other than by appropriation shall be deposited
274 into the Public Guardianship Commission Fund, as provided for in section 35U of chapter 10.

275 SECTION 6. (a) If the commission or any fiduciary agency is appointed a guardian,
276 conservator or other fiduciary, it shall not charge for the costs of its services or the costs of the
277 appointment or approval procedure against the property or income of the individual for whom it
278 serves as fiduciary, unless the court or other appointing authority determines at any time after the

279 commission's or fiduciary agency's appointment that the individual is financially able to pay all
280 or part of the costs.

281 (b) The court or other appointing authority shall determine ability to pay by
282 investigating the nature, extent and liquidity of assets and the disposable net income of the
283 individual.

284 (c) The commission, through its executive director, may recommend fees to be
285 assessed for its services in any individual case in which the ward is no longer indigent, in
286 accordance with standards established in its rules and regulations. No fees may be assessed for
287 fiduciary services unless the eligible person or ward is given written notice at the start of such
288 services that such fees may be assessed.

289 (d) The commission shall deposit any payment of assessed fees into the Public
290 Guardianship Commission Fund, as provided for in section 35U of chapter 10.

291 (e) The commission may claim the reasonable value of services rendered to
292 any individual against his estate upon the death of that individual, if the individual was no longer
293 indigent at the time of death.

294 SECTION 7. Notwithstanding any other law to the contrary, neither the commission nor
295 any fiduciary agency shall be required to file a bond in individual cases in which the commission
296 or a fiduciary agency is appointed to act in a fiduciary capacity but shall give a bond, with
297 sufficient sureties, for the joint benefit of all persons for whom the commission or fiduciary
298 agency is appointed to act in an amount not less than the value of all assets held by the
299 commission and such contracted fiduciary agencies as of the last day of the most recent fiscal
300 year, but at no time less than fifty thousand dollars. Such bond shall be filed with the chief judge

301 of the probate and family court department, and a copy thereof shall be filed with the register of
302 probate of each division of said court in which the commission or a fiduciary agency has been
303 appointed to serve in a fiduciary capacity. The state treasurer may, subject to appropriation, set
304 aside sufficient funds for the purpose of providing a surety for the commission's bond pursuant to
305 this section.

306 SECTION 8. The books and records of the commission shall be audited by the state
307 auditor within eighteen months after this chapter becomes effective as to Suffolk county, and
308 every two years thereafter. A copy of such audit shall be sent to the clerk of the house of
309 representatives who shall forward the same to the house and senate committees on ways and
310 means and the joint committee on human services and elderly affairs.

311 SECTION 10. Section 1 of this Act and sections 1, 2 and 3 of chapter 221D of the
312 General Laws, as inserted by section 9 of this Act, shall take effect on July 1, 2007.

313 All other sections of this Act, including the other sections of said chapter 221D, shall take
314 affect on October 1, 2007, provided, however, that, at said effective date, the provisions of
315 subsection (a) of section 4 of said chapter 221D shall apply only to Suffolk county.

316 Said provisions of subsection (a) of section 4 of chapter 221D shall apply to the counties
317 of Plymouth, Worcester, Norfolk and Barnstable on January 1, 2009 and to all remaining
318 counties on July 1, 2009.