

**HOUSE . . . . . No. 235**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Sally P. Kerans***

*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:	DATE ADDED:
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>2/17/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>

**HOUSE . . . . . No. 235**

By Ms. Kerans of Danvers, a petition (accompanied by bill, House, No. 235) of Sally P. Kerans and Vanna Howard relative to establishing guardians as providers of medical care to support the rights of incapacitated persons. Children, Families and Persons with Disabilities.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

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, “Definitions,” of chapter 118E of the General Laws is hereby  
2 amended by striking out paragraph f and inserting in place thereof the following paragraph: -

3 “‘Provider’, any institution, agency, individual, or other legal entity qualified under the  
4 laws of the commonwealth to perform the medical care or services for which medical assistance  
5 and medical benefits are available under this chapter. Provider includes any institution, agency,  
6 individual, or other legal entity that is duly appointed (or recognized, if appointed elsewhere)  
7 under the laws of the commonwealth as guardian or temporary guardian of a member who is  
8 eligible for medical assistance under this chapter, while engaged in activities that are reasonably  
9 related to consenting or gaining access to medical care or treatment for the member, which  
10 activities may include: obtaining said appointment, if required for the purpose of consenting or  
11 gaining access to medical care or treatment for the member; applying for or recertifying the  
12 member’s eligibility for medical assistance and/or benefits under this chapter; qualifying for, or

13 requesting payment of, medical benefits from other medical insurance, including but not limited  
14 to Medicare; making medical decisions for the member, which may include declining care;  
15 obtaining proper judicial authority when required in order to give informed consent to medical  
16 care or treatment for the member; filing reports with the court that are required in order to, or are  
17 consequent to, performing activities that are described herein; and similar activities related  
18 directly to the member's medical care or treatment; provided, however, that no person who is a  
19 spouse, parent, grandparent, child, grandchild or sibling of the member (hereinafter, an  
20 "immediate family relationship") shall be included in the definition of "Provider" herein."

21 SECTION 2. Section 13C, "Establishment of rates of payment for health care services,"  
22 of chapter 118E of the General Laws is hereby amended by striking out the second full paragraph  
23 and inserting in its place the following paragraph: -

24 "The secretary of the executive office shall have the responsibility for establishing rates  
25 of payment for social service programs which are reasonable and adequate to meet the costs  
26 which are incurred by efficiently and economically operated social service program providers in  
27 providing social service programs in conformity with federal and state law, regulations and  
28 quality and safety standards; provided, that the secretary may designate another governmental  
29 unit to perform such ratemaking functions. When establishing rates of payment for social service  
30 programs, the secretary of the executive office shall adjust rates to take into account factors,  
31 including, but not limited to: (i) the reasonable cost to social service program providers of any  
32 existing or new governmental mandate that has been enacted, promulgated or imposed by any  
33 governmental unit or federal governmental authority; (ii) in the case of guardians and temporary  
34 guardians who are designated as providers under section 8 of this chapter, (A) for professional  
35 guardians, the usual and customary hourly rates charged by professional guardians in the region

36 of the commonwealth in which the reimbursable services are provided, and for individuals who  
37 are not professional guardians, the usual and customary hourly rates paid to home health aides in  
38 the region of the commonwealth in which the reimbursable services are provided; (B) actual time  
39 spent; (C) out-of-pocket expenses for court and administrative filing and notice requirements, if  
40 not reimbursable from any other source; and (D) reasonable travel expenses; (iii) a cost  
41 adjustment factor to reflect changes in reasonable costs of goods and services of social service  
42 programs including those attributed to inflation; and (iv) geographic differences in wages,  
43 benefits, housing and real estate costs in each metropolitan statistical area of the commonwealth  
44 and in any city or town therein where such costs are substantially higher than the average cost  
45 within that area as a whole. The secretary of the executive office shall not consider any of the  
46 resources specified in section 13G when establishing, reviewing or approving rates of payment  
47 for social service programs.”

48 SECTION 3. Section 13D, “Duties of ratemaking authority, criteria for establishing  
49 rates,” of chapter 118E of the General Laws is hereby amended by inserting the following new  
50 eighth paragraph between the prior seventh and eighth paragraphs:-

51 “In establishing rates for medically-related services for which a guardian or temporary  
52 guardian is considered a “Provider” under section 8 this chapter, the secretary of the executive  
53 office shall (i) determine hourly or fee-for-service rates for professional guardians by considering  
54 the usual and customary rates charged by such professionals in the region of the commonwealth  
55 in which the reimbursable services are provided; (ii) determine hourly rates for individuals who  
56 are not professional guardians by considering the usual and customary rates paid to home health  
57 aides in the region of the commonwealth in which the reimbursable services are provided; (iii)  
58 establish a rebuttable presumption that the actual time reported by the guardian or temporary

59 guardian to provide reimbursable services is the factor to which rates are applied; (iv) include as  
60 reimbursable amounts all court and administrative agency filing fees and costs of compliance  
61 with notice requirements for legal proceedings that are reimbursable activities, except to the  
62 extent that such fees and/or costs are reimbursable from any other source; and (v) determine a  
63 reasonable rate for reimbursement of travel expenses.”

64 SECTION 4. Section 36, “Eligible providers, responsibility for overpayments,” of  
65 chapter 118E of the General Law is hereby amended by striking paragraph (2), and inserting in  
66 place thereof the following paragraph:-

67 “(2) present evidence, satisfactory to the division, of their qualifications to provide such  
68 services. In the case of a guardian or temporary guardian, satisfactory evidence of qualification  
69 shall consist of (A) a certificate of said appointment dated within one year of the request for  
70 payment and a sworn statement of its validity on the dates of service; (B) affidavit of no  
71 immediate family relationship with the member; and (C) either (i) valid evidence of professional  
72 licensure in a field relevant to guardianship, or(ii) a certificate of satisfactory completion of a  
73 guardianship training course consisting of at least six hours of training;”

74 SECTION 5. Said section 36, “Eligible providers, responsibility for overpayments,” of  
75 chapter 118E of the General Law is hereby further amended by inserting after paragraph (5) the  
76 following new paragraph (6):-

77 “(6) in the case of guardians or temporary guardians who are considered providers under  
78 section 8 of this chapter, agree to accept as payment only such amounts as are disclosed and  
79 accounted for in an accounting approved by the court having jurisdiction over the appointment.”