

SENATE No. 127

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:

Joan B. Lovely

DISTRICT/ADDRESS:

Second Essex

SENATE No. 127

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 127) of Joan B. Lovely for legislation to establish 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 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", 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. These
10 activities may include, but not be limited to, obtaining said appointment, if required for the
11 purpose of consenting or gaining access to medical care or treatment for the member; applying
12 for or recertifying the member's eligibility for medical assistance and/or benefits under this

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

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

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

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

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

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

59 reimbursable amounts all court and administrative agency filing fees and costs of compliance
60 with notice requirements for legal proceedings that are reimbursable activities, except to the
61 extent that such fees and/or costs are reimbursable from any other source; and (v) determine a
62 reasonable rate for reimbursement of travel expenses.

63 SECTION 4. Section 36 of chapter 118E of the General Law is hereby amended by
64 striking paragraph (2) and inserting in place thereof the following paragraph:-

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

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

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