

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 632

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1993

Ms. SNOWE introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 1993”.

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)), as amended by the Omnibus  
6 Budget Reconciliation Act of 1990 (hereafter referred to  
7 as “OBRA–1990”), is amended—

8 (1) by striking “and” at the end of paragraph  
9 (54);

10 (2) in the paragraph (55) inserted by section  
11 4602(a)(3) of OBRA–1990, by striking the period at  
12 the end and inserting a semicolon;

13 (3) by redesignating the paragraph (55) in-  
14 serted by section 4604(b)(3) of OBRA–1990 as  
15 paragraph (56), by transferring and inserting it  
16 after the paragraph (55) inserted by section  
17 4602(a)(3) of such Act, and by striking the period  
18 at the end and inserting a semicolon;

19 (4) by placing paragraphs (57) and (58), in-  
20 serted by section 4751(a)(1)(C) of OBRA–1990, im-  
21 mediately after paragraph (56), as redesignated by  
22 subparagraph (C);

23 (5) in the paragraph (58) inserted by section  
24 4751(a)(1)(C) of OBRA–1990, by striking the pe-  
25 riod at the end and inserting a semicolon;

1           (6) by redesignating the paragraph (58) in-  
2           serted by section 4752(c)(1)(C) of OBRA-1990 as  
3           paragraph (59), by transferring and inserting it  
4           after the paragraph (58) inserted by section  
5           4751(a)(1)(C) of such Act, and by striking the pe-  
6           riod at the end and inserting “; and”; and

7           (7) by inserting after paragraph (59), as so re-  
8           designated, the following new paragraph:

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

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

19          “(x)(1) In order to receive payments under para-  
20          graphs (2)(A) and (7) of subsection (a) without being sub-  
21          ject to per centum reductions set forth in paragraph (2)  
22          of this subsection, a State must provide that it has adopt-  
23          ed, and assumed responsibility for enforcing, laws relating  
24          to guardianship which meet the requirements of section

1 1931 on or before the expiration of the 2-year period be-  
2 ginning on the date of the enactment of this subsection.

3 “(2) If a State fails to meet the deadline established  
4 under paragraph (1), the per centums specified in para-  
5 graphs (2)(A) and (7) of subsection (a) with respect to  
6 that State shall each be reduced 5 percentage points for  
7 the first two quarters beginning on or after such deadline,  
8 and shall be further reduced an additional 5 percentage  
9 points after each period consisting of two quarters during  
10 which the Secretary determines the State fails to meet the  
11 requirements of paragraph (1) of this subsection, except  
12 that—

13 “(A) neither such per centum may be reduced  
14 more than 25 percentage points by reason of this  
15 paragraph; and

16 “(B) no reduction shall be made under this  
17 paragraph for any quarter following the quarter dur-  
18 ing which such State meets the requirements of  
19 paragraph (1).”.

20 (c) DESCRIPTION OF REQUIREMENTS.—Title XIX of  
21 the Social Security Act (42 U.S.C. 1396 et seq.) is amend-  
22 ed by adding at the end the following new section:

23 “REQUIREMENTS FOR STATE GUARDIANSHIP LAWS

24 “SEC. 1931. (a) IN GENERAL.—For purposes of sec-  
25 tions 1902(a)(60) and 1903(x), a State has adopted laws  
26 relating to guardianship which meet the requirements of

1 this section if the State has adopted laws or issued regula-  
2 tions which include the rights, standards, and duties de-  
3 scribed in subsections (b) through (l) or, in the determina-  
4 tion of the Secretary, which protect individuals in the  
5 State as effectively as laws or regulations which include  
6 the rights, standards, and duties described in such sub-  
7 sections.

8 “(b) RIGHTS OF INDIVIDUALS SUBJECT TO GUARD-  
9 IANSHIP PETITIONS.—The laws of the State shall provide  
10 that—

11 “(1) each individual in the State who is the  
12 subject of a guardianship petition shall be provided  
13 with an adequate and timely notice, in large print  
14 and plain language, of all pending guardianship pro-  
15 ceedings, including a copy of the guardianship peti-  
16 tion, a clear description of such proceedings and of  
17 all rights afforded such individual in the course of  
18 such proceedings, and a summary of the possible  
19 consequences of a determination of incapacity (or, in  
20 the case of a blind or illiterate individual, an oral de-  
21 scription of such rights and information);

22 “(2) a copy of the notice provided under para-  
23 graph (1) shall be provided to the individual filing  
24 a guardianship petition and to the spouse, child, sib-

1 ling, nearest relative, or custodian of the individual  
2 who is the subject of such guardianship petition;

3 “(3) each individual in the State who is the  
4 subject of a guardianship petition has the right to  
5 counsel who will act as an advocate for such individ-  
6 ual with respect to such petition unless such individ-  
7 ual knowingly and voluntarily waives such right, and  
8 the court shall appoint counsel for such individual at  
9 public expense if such individual is indigent or if  
10 such individual lacks the capacity to waive the right  
11 to counsel;

12 “(4) each individual in the State who is the  
13 subject of a guardianship petition has the right to  
14 have the question of incapacity heard by a jury upon  
15 request; and

16 “(5) each individual in the State against whom  
17 a determination of incapacity and guardianship  
18 order is issued may file an appeal contesting such  
19 determination and order in the appropriate court of  
20 appeal not later than 30 days after such determina-  
21 tion and order is issued, and may at any time peti-  
22 tion the court issuing such determination and order  
23 to modify or dismiss such determination or order.

24 “(c) STANDARDS FOR DETERMINATIONS OF INCA-  
25 PACITY.—The laws of the State shall provide that—

1           “(1) no determination of incapacity shall be  
2           made at a guardianship hearing unless the individ-  
3           ual who is the subject of the guardianship petition  
4           is present at such hearing, unless the court deter-  
5           mines, on the basis of information provided by a  
6           physician, social worker, or other person trained to  
7           work with the elderly, the developmentally disabled,  
8           or the mentally retarded (whichever is appropriate in  
9           the case of a particular individual), that such indi-  
10          vidual has knowingly and voluntarily waived the  
11          right to be present at the hearing or cannot be  
12          present because of physical incapacity; and

13           “(2) no determination of incapacity shall be  
14          made at a guardianship hearing on the basis of the  
15          age of the individual who is the subject of the guard-  
16          ianship petition but shall instead be made on the  
17          basis of clear and convincing evidence that such in-  
18          dividual is incapable of administering his own  
19          affairs.

20          “(d) STANDARDS FOR PERSONNEL INVOLVED IN  
21          GUARDIANSHIP HEARINGS.—Court personnel in the State  
22          involved in guardianship hearings shall be trained to work  
23          with the elderly, the developmentally disabled, and the  
24          mentally retarded, and shall be briefed on general issues  
25          facing such groups, and shall provide necessary visual

1 aids, interpreters, and other devices in order to assist  
2 these individuals during guardianship hearings, and shall  
3 make reasonable efforts to schedule each guardianship  
4 hearing at a time and location convenient for the individ-  
5 ual who is the subject of the guardianship petition.

6       “(e) EFFECT OF DETERMINATION OF INCAPACITY.—  
7 A determination of incapacity in a guardianship hearing  
8 in the State shall not be considered prima facie evidence  
9 that the individual in question is insane or is unable to  
10 function in a non-institutionalized setting.

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

13               “(1) each ward in the State shall, when fea-  
14 sible, have his personal preferences taken into ac-  
15 count by the court in the appointment of a guardian;  
16 and

17               “(2) during the period of guardianship, each  
18 ward in the State shall be entitled to participate in  
19 all decisions affecting such ward to the maximum  
20 extent possible commensurate with such ward’s func-  
21 tional limitations, and shall retain all rights not or-  
22 dered by the court to be transferred to the guardian.

23       “(g) STANDARDS FOR GUARDIANSHIPS.—Each  
24 guardianship imposed in the State shall be imposed on the

1 ward in the least restrictive manner commensurate with  
2 the ward's functional limitations.

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

5               “(1) no person may be appointed to serve as a  
6 guardian in the State unless such person certifies  
7 that he has completed, or agrees to enroll in and  
8 complete, a program of court-supervised training,  
9 based upon standards developed by the governor of  
10 the State or his designee, in the legal, economic, and  
11 psychosocial needs of wards, and a guardian shall be  
12 removed from his position as guardian if the court  
13 determines that he has failed to complete such a  
14 program;

15               “(2) no person who has been convicted of a fel-  
16 ony may be appointed to serve as a guardian in the  
17 State unless the court determines that an exception  
18 to such prohibition is appropriate in a particular  
19 case; and

20               “(3) no person may be appointed to serve as a  
21 guardian in the State unless such person has filed,  
22 and the court conducting the guardianship hearing  
23 has approved, a guardianship plan which includes at  
24 least a description of the ward's proposed living ar-  
25 rangements, a plan for meeting the ward's financial,

1 medical, and other remedial needs, and provisions  
2 for maintaining contact between the ward and the  
3 ward's family and 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 at least a description of the manage-  
10 ment of the ward's finances during the previous  
11 year, a physician's report on the health and physical  
12 well-being of the ward, and a recommendation of  
13 whether the guardianship should be continued,  
14 modified, or terminated;

15 “(2) each guardian in the State may use funds  
16 from the estate of the ward over whose affairs he  
17 has control only for the administration of the guard-  
18 ianship and the benefit of the ward, and shall repay  
19 to the ward's estate any funds used by such guard-  
20 ian for any purpose determined to be improper by  
21 the court which issued the order giving such guard-  
22 ian control over such ward's affairs; and

23 “(3) each guardian in the State shall keep the  
24 court which issued the order giving such guardian  
25 control over the ward's affairs informed of the

1       whereabouts of such ward, and shall notify such  
2       court whenever such ward is moved to a new resi-  
3       dence.

4       “(j) STANDARDS REGARDING WARDS MOVING TO  
5 AND FROM STATE.—The laws of the State shall provide  
6 that—

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

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

23       “(k) COURT REVIEW OF GUARDIANSHIP ORDERS.—  
24       Each court in the State which issues a guardianship order  
25       shall conduct an annual review of the guardianship to de-

1 termine whether the guardian is performing his duties in  
2 accordance with the appropriate laws and whether the  
3 guardianship should be continued, modified, or termi-  
4 nated.

5 “(l) STANDARDS FOR PRIVATE PROFESSIONAL  
6 GUARDIANS.—Each private professional guardian in the  
7 State may operate in the State only if such guardian is  
8 bonded and licensed or certified in accordance with re-  
9 quirements consistent with the provisions of this section  
10 developed by the governor of the State or his designee.

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

12 “(1) the term ‘guardian’ means a person vested  
13 by law with the power and duty of taking care of the  
14 person or property of another 18 years or older who  
15 is adjudged incapable of administering his own af-  
16 fairs, except that such term does not include a  
17 guardian ad litem;

18 “(2) the term ‘guardianship’ means any legal  
19 relationship, including a conservatorship, in which a  
20 person is vested by law with the power and duty of  
21 taking care of the person or property of a ward, ex-  
22 cept that such term does not include a guardianship  
23 ad litem; and

24 “(3) the term ‘ward’ means a person 18 years  
25 or older adjudged incapable of administering his

1 own affairs and placed by a court under the care of  
2 a guardian.”.

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

5 (a) IN GENERAL.—The Secretary of Health and  
6 Human Services (in this section referred to as the “Sec-  
7 retary”) shall award 2-year demonstration grants to eligi-  
8 ble States for the establishment and operation of guard-  
9 ianship advocate programs, including the hiring and train-  
10 ing of individuals to serve as guardianship advocates and  
11 investigators in such programs.

12 (b) DUTIES OF ADVOCATES AND INVESTIGATORS.—  
13 Individuals hired and trained to serve as guardianship ad-  
14 vocates and investigators with funds provided under sub-  
15 section (a) shall serve as employees of the courts within  
16 the State which conduct guardianship hearings and issue  
17 determinations of incapacity and guardianship orders, and  
18 shall provide information and services to wards and to in-  
19 dividuals who are the subjects of guardianship petitions,  
20 including—

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

23 (2) notifying such individuals of their rights  
24 under State guardianship law;

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

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

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

8           (6) evaluating reports from guardians;

9           (7) performing other services to assist the  
10          courts in conducting and monitoring guardianships;  
11          and

12          (8) investigating and evaluating the movement  
13          of wards to new residences.

14          (c) ELIGIBILITY.—A State shall be eligible to receive  
15          a grant under subsection (a) if it submits an application  
16          to the Secretary at such time, in such form, and contain-  
17          ing such information and assurances as the Secretary may  
18          require, including an assurance that the State shall pre-  
19          pare and submit to the Secretary an evaluation of each  
20          program in such State funded with a grant received under  
21          subsection (a).

22          (d) PREFERENCE TO SELF-FINANCING PROGRAMS.—  
23          In awarding grants under subsection (a), the Secretary  
24          shall give preference to those States which provide assur-  
25          ances to the Secretary that the program funded with such

1 a grant will, without Federal financial assistance, continue  
2 to operate after the expiration of such grant.

3 (e) REPORT TO CONGRESS.—Not later than 3 years  
4 after the final grant is awarded under subsection (a), the  
5 Secretary shall submit a report to Congress describing the  
6 programs funded with such grants, evaluating the effect  
7 of such programs on the guardianship process and on the  
8 protection of the rights of wards and individuals subject  
9 to guardianship petitions, and containing recommenda-  
10 tions on the desirability of continuing the funding of such  
11 programs on a permanent basis.

12 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
13 are authorized to be appropriated for grants under sub-  
14 section (a) \$5,000,000.

15 (g) DEFINITION.—In this section, the term “State”  
16 means each State, the District of Columbia, the Common-  
17 wealth of Puerto Rico, the Virgin Islands, and Guam.

○