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PUBLIC HEARING

before

SENATE COMMITTEE ON AGING

on

SENATE BILL 1927

(Designated the "Public Guardian for Elderly Adults Act";
appropriates \$200,000)

Held:
October 1, 1984
Room 346
State House Annex
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Catherine A. Costa, Chairwoman

ALSO PRESENT:

David Rosen, Research Assistant
Office of Legislative Services
Aide, Senate Committee on Aging

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SENATE, No. 1927
STATE OF NEW JERSEY

INTRODUCED JUNE 25, 1984

By Senators PALLONE, VAN WAGNER and COSTA

Referred to Committee on Aging

AN ACT requiring the Public Advocate to establish a public guardianship program for elderly adults and making an appropriation therefor.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be known and may be cited as the "Public
2 Guardianship Program for Elderly Adults."

1 2. The Legislature finds and declares that some elderly persons
2 in the State, because of grave disability, are unable to meet varying
3 essential requirements for their physical health or to manage vary-
4 ing essential aspects of their financial resources: that private
5 guardianship is inadequate where there are no willing and
6 responsible family members or friends to serve as guardian and
7 where the gravely disabled elderly person does not have adequate
8 income or wealth for the compensation of a private guardian, that
9 this act establishes a public guardianship program for elderly
10 adults for the purpose of furnishing guardianship services to
11 gravely disabled elderly persons at reduced or no cost, unless the
12 gravely disabled elderly person has adequate income or wealth to
13 compensate a private guardian: that this act intends to promote the
14 general welfare by establishing a public guardianship system that
15 permits gravely disabled elderly persons at reduced or no cost,
16 unless the gravely disabled elderly person has adequate income or
17 wealth to compensate a private guardian; that this act intends to
18 promote the general welfare by establishing a public guardianship
19 system that permits gravely disabled elderly persons to deter-

20 minatively participate as fully as possible in all decisions that affect
21 them, that assists these persons to **regain** or develop their **capacities**
22 to the maximum extent possible, and that accomplishes these
23 objectives through the use of the least restrictive alternatives.

1 3. **As used in this act:**

2 a. "Court" means the Superior Court.

3 b. "Elderly adult" means a person age 60 years or older.

4 c. "Gravely disabled" means **unable to meet essential require-**
5 **ments for one's physical health or safety or to manage one's financial**
6 **resources as a result of severe mental disorder.**

7 d. "Lack of capacity to make informed decisions about care,
8 treatment, or management services" means the inability, by reason
9 of mental condition, to achieve a rudimentary understanding, after
10 conscientious efforts at explanation, of the purpose, nature, or
11 possible significant benefit of care, treatment, or management
12 services to be provided under public guardianship; provided that a
13 person is deemed incapable of understanding the purpose if, as a
14 result of impaired mental ability to perceive reality, he cannot
15 realize that his recent behavior has caused or has created a clear
16 and substantial risk of serious physical injury, illness, or disease
17 or of gross financial mismanagement or manifest financial vulner-
18 ability to oneself; and provided further that a person is deemed to
19 lack the capacity to make informed decisions about care, treatment,
20 or management services if the reason for refusing the same is
21 expressly based on either the belief that he is unworthy of assis-
22 tance or the desire to harm or punish oneself.

23 e. "Psychotropic medication" means any drug or compound
24 affecting the mind, behavior, intellectual functions, perception,
25 moods, and emotion and includes antipsychotic, antidepressant,
26 antimanic, and antianxiety drugs.

27 f. "Public guardian" means the head of the public guardianship
28 program for elderly adults.

29 g. "Severe mental disorder" means a severe impairment of
30 emotional processes, ability to exercise conscious control of one's
31 actions, or ability to perceive reality or to reason or understand,
32 which impairment is manifested by instances of grossly disturbed
33 behavior or faulty perceptions.

34 h. "Unable to manage one's financial resources" means unable
35 to take those actions necessary to obtain, administer, or dispose of
36 real or personal property, intangible property, business property,
37 benefits, or income so that, in the absence of public guardianship,
38 gross financial mismanagement or manifest financial vulnerability
39 is likely to occur in the near future. For purposes of this act, any

40 inability shall be evidenced by recent behaviors causing harm or
41 creating a clear and substantial risk thereof, and at least one in-
42 cidence of this behavior shall have occurred within twenty days of
43 the filing of the petition for public guardianship, except that this
44 inability is not to be evidenced solely by isolated incidents of
45 negligence or improvidence. This requirement shall not apply in the
46 case of a petition for renewal of public guardianship.

47 i. "Unable to meet essential requirements for one's physical
48 health or safety" means unable, through one's own efforts and
49 through acceptance of assistance from family, friends, and other
50 available private and public sources, to meet one's needs for medical
51 care, nutrition, clothing, shelter, hygiene, or safety so that, in the
52 absence of public guardianship, serious physical injury, illness, or
53 disease is likely to occur in the near future. For purposes of this
54 act, any inability shall be evidenced by recent behaviors causing
55 harm or creating a clear and substantial risk thereof, and at least
56 one incidence of this behavior shall have occurred within twenty
57 days of the filing of the petition for public guardianship. This
58 requirement shall not apply in the case of petition for renewal of
59 public guardianship.

1 4. The Public Advocate shall establish a public guardianship
2 program for elderly adults which is independent of any service-
3 providing agency, and appoint the head of the program who shall
4 be the public guardian. The public guardian is authorized to take
5 any actions on behalf of a ward that a private guardian is au-
6 thorized to take, except as otherwise provided in this act.

1 5. The Public Advocate shall prepare guidelines for the public
2 guardianship program for elderly adults which shall include
3 standards regarding the number of program offices, but no office
4 shall be responsible for more than 500 wards. If a program office is
5 responsible for 500 wards, another office is to be established for
6 additional wards. No office shall assume responsibility for any
7 wards beyond a ratio of thirty wards per professional staff member.

1 6. The public guardian may serve as guardian and conservator
2 or either of these, after appointment by a court pursuant to the pro-
3 visions of Title 3B of the New Jersey Statutes (N. J. S. 3B:1-1
4 et seq.) provided that the proposed ward of the public guardian has
5 had the opportunity for the hearing prescribed in section 10 of this
6 act.

7 a. The public guardian shall have the same powers and duties
8 as a private guardian or conservator, except as otherwise limited
9 by law or court order.

10 b. The public guardian may, on his own motion, or at the request

11 of the court, intervene at any time in any guardianship or con-
12 servatorship proceeding involving a ward by appropriate motion
13 of the court, if the public guardian or the court deems the interven-
14 tion to be justified because an appointed guardian or conservator
15 is not fulfilling his duties, the estate is subject to disproportionate
16 waste because of the costs of the guardianship or conservatorship,
17 or the best interests of the ward require intervention.

1 7. a. The public guardian shall employ at least one social worker
2 and one financial manager and may employ additional staff mem-
3 bers necessary for the proper performance of his duties, to the
4 extent authorized in the budget for the program.

5 b. The public guardian may delegate to members of his staff
6 powers and duties as guardian or conservator and other powers
7 and duties that are created by this act, although the public guardian
8 retains ultimate responsibility for the proper performance of these
9 delegated functions. The public guardian:

10 (1) May formulate and adopt those procedures that are
11 necessary to promote the efficient conduct of the work and general
12 administration of the office, its professional staff, and other em-
13 ployees;

14 (2) May contract for services necessary to carry out the duties
15 of the public guardian program;

16 (3) May accept the services of volunteer workers or consultants
17 at no compensation or at nominal or token compensation and reim-
18 burse them for their proper and necessary expenses;

19 (4) Shall keep and maintain proper financial and statistical
20 records concerning all cases in which the public guardian provides
21 guardianship or conservatorship services, provided that the privacy
22 and confidentiality of these records for each ward are preserved:
23 and

24 (5) May not commit a ward to a mental facility without an in-
25 voluntary commitment proceeding as provided by law.

1 8. Any gravely disabled elderly person residing in the State
2 who cannot afford to compensate a private guardian, who does not
3 have a willing and responsible family member or friend to serve as
4 guardian, who lacks the capacity to make informed decisions about
5 proposed care, treatment, or management services, who is unable
6 to manage one's financial resources, and who is unable to meet
7 essential requirements for one's physical health and safety, is
8 eligible for the services of the public guardian.

9 A gravely disabled elderly person, or any county welfare agency
10 acting on behalf of a gravely disabled elderly person, may petition
11 the court to have the public guardian appointed as his guardian or

12 conservator with the powers and duties ordinarily conferred by
13 law on guardians and conservators or for certain limited purposes
14 described in the petition. If the petition requests that only limited
15 powers be granted, the court shall incorporate these limitations
16 into its order of appointment. The court shall ensure beyond a
17 reasonable doubt that the petition is not the product of mistake,
18 fraud, or duress. The filing of the petition will not be the basis for
19 any inference concerning the competence of the petitioner or for
20 any loss of civil rights or benefits.

1 9. a. If a public guardian is appointed guardian or conservator
2 for a gravely disabled elderly person, the administrative costs of
3 the public guardian's services and the costs incurred in the appoint-
4 ment procedure will not be charged against the income or the estate
5 of the gravely disabled person, unless the court determines at any
6 time that the person is financially able to pay all or part of these
7 costs.

8 b. The ability of the income or estate of the gravely disabled
9 person to pay for administrative costs of a public guardian or costs
10 incurred in the appointment procedure will be measured according
11 to the person's financial ability to engage and compensate a private
12 guardian. The ability is a variable dependent on the nature, extent,
13 and liquidity of assets; the disposable net income of the person;
14 the nature of the guardianship or conservatorship; the type, dura-
15 tion, and the complexity of the services required; and any other
16 foreseeable expenses.

17 c. The public guardian shall investigate the financial status of a
18 person who requests the appointment of the public guardian as his
19 guardian or for whom a court is considering the appointment of the
20 public guardian. In connection with this investigation, the public
21 guardian shall have the authority to require the proposed ward to
22 execute and deliver any written requests or authorizations which
23 may be necessary under applicable law to provide the public
24 guardian with access to records of public or private sources, other-
25 wise confidential, as may be needed to evaluate eligibility. The
26 public guardian is authorized to obtain information from any public
27 record office of the state or of any subdivision or agency thereof
28 upon request and without payment of any fees ordinarily required
29 by law.

1 10. a. The initial appointment by a court of the public guardian
2 as guardian or conservator will be for no longer than six months,
3 after the court determines by clear, unequivocal, and convincing
4 evidence that the proposed ward of the public guardian is gravely
5 disabled; cannot afford to compensate a private guardian; does not

6 have willing and responsible family members or friends to serve
7 as guardian; and lacks the capacity to make informed decisions
8 about proposed care, treatment, or management services; is unable
9 to manage one's financial resources and is unable to meet essential
10 requirements for one's physical health and safety and that
11 necessary services are available to protect the proposed elderly
12 ward from serious injury, illness, or disease or from gross financial
13 mismanagement or manifest financial vulnerability. Successive
14 appointments for a term no longer than one year may be made by
15 the court after the same determinations.

16 b. No later than thirty days prior to the expiration of his term as
17 guardian or conservator, the public guardian shall file with the
18 court an inventory and account in accord with the provisions of
19 N. J. S. 3B:17-3 which will be subject to examination pursuant to
20 the provisions of N. J. S. 3B:17-6. At the same time, the public
21 guardian shall file a statement setting forth facts that indicate at
22 least: (1) the present personal status of the gravely disabled per-
23 son, (2) the public guardian's plan for regaining, developing, and
24 preserving the well-being and capacity of the ward to make in-
25 formed decisions about care and treatment services, and (3) the
26 need for the continuance or discontinuance of the guardianship or
27 conservatorship or for any alteration of the powers of the public
28 guardian.

29 c. The court shall hold a hearing to determine the findings set
30 forth in subsection a. of this section concerning the appointment, or
31 renewal of the appointment of the public guardian, unless the court
32 dismisses the petition for lack of substantial grounds.

33 d. The proposed ward of the public guardian shall be present at
34 the hearing unless he is medically incapable of being present to the
35 extent that attendance is likely to cause serious and immediate
36 physiological damage to the proposed ward. A waiver for medical
37 incapability shall be determined on the basis of factual information
38 supplied to the court by counsel, including at least the affidavit or
39 certificate of a duly licensed medical practitioner.

40 e. The proposed ward of the public guardian has the right to
41 counsel whether or not the proposed ward is present at the hearing,
42 unless the right to counsel is knowingly, intelligently, and volun-
43 tarily waived by the ward. If the proposed ward cannot afford
44 counsel or lacks the capacity to waive counsel, the court shall
45 appoint counsel who will always be present at any hearing involving
46 the proposed ward. Where the proposed ward cannot afford
47 counsel, the State shall pay as reasonable attorney's fees and com-
48 pensation that is customarily charged by attorneys in this State for
49 comparable services.

50 f. The proposed ward of the public guardian shall have the right
51 to trial by jury.

52 g. The proposed ward of the public guardian has the right to
53 secure an independent medical or psychological examination or
54 both relevant to the issues involved in the hearing at the expense
55 of the State if the proposed ward is unable to afford this examina-
56 tion and to present a report of this independent evaluation or the
57 evaluator's personal testimony as evidence at the hearing.

58 h. The proposed ward at any evaluation has the right to remain
59 silent, the right to refuse to answer questions when the answers may
60 tend to incriminate the proposed ward, the right to have counsel or
61 any other mental health professional present, and the right to
62 retain the privileged and confidential nature of the evaluation for
63 all proceedings other than proceedings pursuant to this act; except
64 that, after full explanation, the proposed ward may be required to
65 submit to interviews for the purpose of ascertaining whether he
66 lacks the capacity to make informed decisions about care and treat-
67 ment services, and the proposed ward's failure to respond to ques-
68 tions relevant to that issue may be introduced as evidence of a lack
69 of this capacity. The proposed ward of the public guardian may
70 present evidence and confront and cross-examine witnesses.

71 i. The duties of counsel representing a proposed ward of the
72 public guardian at the hearing shall include at least: a personal
73 interview with the proposed ward; counseling the proposed ward
74 with respect to his rights; and arranging for an independent
75 medical psychological examination or both as provided in subsec-
76 tion g. of this section.

77 j. Except where specified otherwise, the rules of evidence and
78 rules of procedure, including those on discovery, that are applicable
79 in civil matters shall govern all proceedings under this act.

80 k. Any psychiatrist or psychologist giving testimony or reports
81 containing descriptions and opinions will be required to provide a
82 detailed explanation as to how these descriptions and opinions were
83 reached and a specification of all behaviors and other factual in-
84 formation on which these descriptions and opinions are based.
85 These witnesses shall not be permitted to give opinion testimony
86 stating the applicable diagnostic category unless the proposed ward
87 of the public guardian raises the issue through cross-examination
88 or the presentation of evidence.

89 l. The proposed ward of the public guardian is entitled, upon the
90 request of the proposed ward, to have the court and the jury, if any,
91 informed regarding the influence of any psychotropic medication

92 being taken by the proposed ward and its effect on the proposed
93 ward's actions, demeanor, and participation at the hearing.

94 m. The proposed ward of the public guardian shall have the
95 right to appeal adverse orders and judgments in the manner pre-
96 scribed in Rules Governing the Courts of the State of New Jersey,
97 and the proposed ward shall have the right to appellate counsel,
98 who shall be compensated as provided in subsection e. of this
99 section.

1 11. a. If, pursuant to section 10 of this act, it is determined that
2 the public guardian should be appointed for a proposed ward, the
3 court shall enter an order that makes findings of fact on the basis
4 of clear, unequivocal, and convincing evidence supporting each
5 grant of authority to the public guardian and that:

6 (1) establishes whether the public guardian has authority over
7 the person, or the property, or both person and property, of the
8 ward;

9 (2) Establishes whether, and to what extent, the authority over
10 person or property or both is partial; and

11 (3) Sets the term of appointment, which shall be no longer than
12 provided in subsection a. of section 10 of this act.

13 b. No grant of authority to the public guardian will be more than
14 the least restrictive alternative warranted under the facts, and the
15 public guardian shall employ the form of assistance that least
16 interferes with the capacity of a ward to act in his own behalf.

17 c. There will be no liability by physicians for failure to obtain
18 consent from a ward or proposed ward of the public guardian in an
19 emergency that threatens death or serious bodily harm.

1 12. a. Each ward of the public guardian shall have the right to
2 prompt and adequate personal and medical care, treatment, and
3 rehabilitative services for the purposes both of meeting needs for
4 protection from physical injury, illness, or disease and of restora-
5 tion to the abilities to care for oneself and to make one's own in-
6 formed decisions about care and treatment services.

7 b. In the event that the public guardian is unable to provide
8 these services out of funds available from the ward's estate and
9 income and other private and governmental benefits to which the
10 ward is entitled, the public guardian or ward may petition the
11 court for an order requiring the State through the county to
12 provide funds that are necessary to provide services that would
13 implement the ward's right to services. The petition shall provide
14 complete details with regard to funds and other benefits at the
15 public guardian's disposal and justification for the necessity and
16 appropriateness of the services for which finances are unavailable.

17 Upon receipt of the petition, the court shall schedule the matter for
 18 a hearing within twenty days and cause the petition and notice of
 19 the hearing to be served upon the public guardian, the ward, the
 20 ward's attorney, and the Department of Human Services and the
 21 county welfare agency in the county in which the ward resides.
 22 In preparation for the hearing, the Department of Human Services
 23 and the county welfare agency in the county in which the ward
 24 resides shall have access to relevant care and treatment records of
 25 the ward. At the hearing, the burden of proof by a preponderance
 26 of the evidence will be upon the petitioning party.

27 c. At the conclusion of the hearing, the court shall enter an order
 28 dismissing the petition or requiring the Department of Human
 29 Services through the county welfare agency in the county in which
 30 the ward resides to provide the necessary funds for any services to
 31 which the ward has a right under subsection a. of this section and
 32 from which there is at least a substantial probability of significant
 33 benefit to the ward.

1 13. The public guardian may be discharged by a court with
 2 respect to any of the authority granted over each ward upon peti-
 3 tion of the gravely disabled elderly person or any interested person
 4 or upon the court's own motion, when it appears that the services
 5 of the public guardian are no longer necessary.

1 14. a. When a person is appointed to the position of public
 2 guardian, he succeeds immediately to all rights, duties, respon-
 3 sibilities, powers, and authorities of the preceding public guardian.

4 b. When the position of public guardian is vacant, subordinate
 5 personnel employed under section 6 of this act shall continue to act
 6 as if the position of public guardian was filled.

7 c. When the position of public guardian becomes vacant, a
 8 successor in office shall be appointed within forty-five days.

1 15. In any proceeding for appointment of a public guardian, or
 2 in any proceeding involving the estate of a gravely disabled elderly
 3 person for whom a public guardian has been appointed conservator
 4 or guardian, the court may waive any court costs or filing fees.

1 16. The Public Advocate shall adopt rules and regulations in
 2 accordance with the "Administrative Procedure Act," P. L. 1968,
 3 c. 410 (C. 52:14B-1 et seq.) to effectuate the purposes of this act.

1 17. There is appropriated \$200,000.00 from the Casino Revenue
 2 Fund established under section 145 of P. L. 1977, c. 110 (C.
 3 5:12-145) to the Department of the Public Advocate.

1 18. This act shall take effect on January 1, 1985.

STATEMENT

This bill establishes a "Public Guardianship Program for Elderly Adults" for senior citizens age 60 years or older, who are gravely disabled, unable to adequately care for their health or their financial resources, lacking willing and responsible family members or friends to serve as guardian, and do not have adequate income or wealth to compensate a private guardian.

This program is created in the Department of the Public Advocate and is to be independent of any service-providing agency. The Public Advocate shall appoint the program head who will be the public guardian and prepare guidelines for the program which shall include establishing program offices which are responsible for no more than 500 wards and setting caseloads for professional staff members which shall not be greater than 30 wards.

A gravely disabled elderly person, or any county welfare agency acting on behalf of a gravely disabled elderly person may petition the court for appointment of a public guardian, who shall have the same powers and duties as a private guardian or conservator. The public guardian shall employ at least one social worker and one financial manager and may employ other professional staff members necessary for the proper performance of his duties. The public guardian may contract for any necessary services, and may accept volunteer or consultant services. The public guardian may not commit a ward to a mental facility without an involuntary commitment proceeding as provided by law.

Persons who are financially able to, will bear responsibility for paying for administrative costs of a public guardian or costs incurred in the appointment procedure. Initial appointment by the court of the public guardian as guardian or conservator shall be for no more than six months, with successive appointments for no more than one year. No later than 30 days prior to the expiration of his term as guardian or conservator, the guardian shall file an inventory and account with the court, and a statement which shall include the present personal status of the ward, the public guardian's plan concerning the ward's well-being and capacity, and the need for continuance or discontinuance of the guardianship or conservator.

The court shall hold a hearing concerning the appointment or renewal of appointment of the public guardian. The proposed ward shall be present at the hearing unless he is medically incapacitated. The proposed ward has the following rights: to counsel; to trial by jury; to secure an independent medical and or psychological examination; to remain silent; to refuse to answer questions when

the answers may incriminate him; to have counsel or any other mental health professional present; to retain confidentiality of the evaluation; to present evidence; to confront and cross-examine witnesses; and, to have the court and jury, if any, informed regarding the influence of any psychotropic medication being taken and to appeal adverse orders and judgments. The proposed ward shall also have the right to prompt and adequate personal and medical care, treatment, rehabilitative services.

If appointment of a guardian is determined by the court, the court order entered shall establish whether the public guardian has authority over the person, or the property or both; whether and to what extent this authority is partial; and the term of appointment. The grant of authority shall be no more than the least restrictive alternative warranted.

The public guardian can petition the court for an order requiring the State, through the county, to provide funds for necessary services, if funds are not available from the ward's estate and income and from other private or governmental benefits to which the ward is entitled.

The bill includes a \$200,000.00 appropriation from the Casino Revenue Fund to the Department of the Public Advocate.

SENATOR CATHERINE A. COSTA (Chairwoman): Good morning. I am Cathy Costa, and I am the Chairman of the Senate Committee on Aging. I welcome you to this public hearing on Senate Bill 1927, the Public Guardianship Program for elderly adults.

Can you all hear me? (affirmative response) I thought I could just speak softly through this microphone and you would be able to hear me, but this is only for our recording machine.

Nationally and in New Jersey, the issue of public guardianship has received increasing attention. It is widely believed that there are some elderly people who are unable to look after their own best interests. They have no family nor friends who are willing and able to assume the responsibility. Some elderly people who are unable to look after their own best interests do not have the wealth to attract a competent, private guardian.

I wish to thank Senator Pallone for raising this important issue and offering, in his bill, an approach to deal with this problem. The Committee has called this public hearing because we believe that the issues raised by Senator Pallone's bill are both important and complex. We will need the experience, knowledge, and expertise of those of you here today as we consider this bill. In addition to any points you wish to make, the Committee would appreciate the views of the witnesses on several issues of particular concern.

One, what is the extent of the unmet need for guardianship services? Two, is a public guardianship program the best way of meeting this need? If it is, where in government should the program be located? Three, how can we develop a program which protects both the welfare and the rights of the people it would serve? Four, how should a public guardianship program interrelate with existing statutory provisions for guardianship?

I understand we have language in our statutes that differ from that in the bill. This is what I am speaking about.

We are ready to listen to you and learn from you. I'm sure Senator Pallone will appreciate your suggestions, perhaps for amendments to this bill.

We are expecting Senator Leanna Brown. She isn't here yet, but when she does come in, I'll introduce her. I understand that Senator Garibaldi is in Italy; that sounds great. Both Senators Lesniak and Jackman could not be here with us today. We have people who are recording this public hearing, so a transcript will be made available.

With that, I would like to call Senator Frank Pallone, a Democrat from District 11, Monmouth County.

SENATOR FRANK PALLONE, JR.: Thank you, Senator Costa. I want to thank you for having this public hearing today on what I consider to be a very important issue and something that hopefully we can work out in a legislative approach which will provide for a program that will benefit the elderly who are concerned and will be around for a long time. That is something we can be proud of.

I may take a little more time than you are expecting, only because I want to give a little background of my own experience in dealing with some of these cases. I also want to talk in general about some suggested changes in the bill.

Until I was recently elected to the Senate, I was working for Monmouth County Protective Services for the Elderly, which is an innovative program basically for abused and neglected elderly. One of the speakers here today is the Director of that program, Judy Parnes, who organized and also set up the program in Monmouth County.

There are other protective services for the elderly in a few other counties around the State, but in general, the functions of Protective Services in most of the counties are performed by the County Board of Social Services.

I acted as an attorney on a part-time basis for Protective Services for the Elderly in Monmouth County. I came across many cases in the period of time I was there -- about a year or so -- where there were elderly individuals who had no relatives nor friends. Most of them were in their own homes or apartments, and because of their situation, because they basically were incompetent, they had to be taken into court to have guardians appointed. Through Protective Services for the Elderly, we initiated guardianship proceedings. In

other words, we were, in fact, the plaintiffs in guardianship actions on behalf of these individuals when they were found.

The procedure, as outlined in this bill-- One of the things that the bill does, which I think hasn't been brought up, but should be mentioned is, the bill provides -- in fact, it requires -- that the County Board of Social Services will have a mandate to bring guardianship actions when they find people who do not have friends or relatives who could provide private guardianship actions.

You may know what the normal procedure is. If you have a mother or a father who needs to have a guardian appointed, you, as a son, daughter, nephew, or friend, can simply go into court and be the plaintiff in the action. If the court finds that the person is incompetent in the case of a guardianship or a conservatorship-- If the court finds that a conservator should be appointed, normally the friend or relative who initiated that action is appointed as the guardian or conservator. In the case where there is no such relative or friend, the County Board of Social Services, or the Protective Services Agency which might be contracted through the County Board of Social Services, would bring the action.

What has happened with Protective Services in Monmouth County is, even though we bring the action, once the action is brought, if the person is declared incompetent and a guardian has to be appointed, since there is no relative or friend who can be appointed, the court normally finds a member of the bar -- an attorney -- who, in most cases that I ran across, was a younger person. In fact, after I left Protective Services, the court, in some cases, asked me to come in. In other words, the court will appoint a private attorney to represent the person who is the subject of the proceeding. That person will represent the alleged incompetent person during the course of the proceeding, but after the proceeding, that same attorney, who is often a young member of the bar, is then appointed to be the actual guardian.

The problem has been that in many cases, that individual simply cannot take on that responsibility because he has too many other things to do, or he is not paid to compensate for the activity he is concerned with. Normally a person who is a member of the bar,

especially if he is younger, doesn't have the time to constantly monitor the person who he is guardian of. He may have to place this person in a nursing home, which is often the case. He has the financial responsibility, as well as the responsibility to care for that person as an individual. The attorney simply cannot handle that responsibility. It is just basically an ad hoc procedure, which, in my opinion, usually doesn't work out.

What we are advocating here is that in those cases -- there are not that many, but there are quite a few across the State -- where there is no friend or relative who could be appointed guardian, we should establish a public guardianship office. Where that office is to be located has yet to be determined. That agency would take on the responsibility of guardianship or conservatorship for those individuals who don't have anyone to do it. That office would have financial managers -- accountants who can handle the individuals as far as their finances are concerned. There would also be social workers involved who would be able to visit the persons who have been declared incompetent. The idea is that there would be an ongoing responsibility on the part of the agency to care for these various individuals. That is the basic problem we are trying to address here.

Now, I am just going to briefly get into some other points with regard to the bill and the placement of this Public Guardianship Program.

One of the things that was pointed out initially when I drafted the bill was that the bill provides for the Office of the Public Advocate to house the Public Guardianship Program. After discussions with people from the Public Advocate's office, and further discussions with other possible agencies, it is my recommendation that this Public Guardianship Program be placed instead within the Department of Community Affairs, which, in effect, has a status similar to the Office on Aging or the Ombudsman for the Institutionalized Elderly. In other words, it would be a separate office within that Department, which would not be accountable to the Office on Aging or the Ombudsman. It would have a status equal to them.

Within the Public Guardianship Program, there would be regional offices around the State that would handle groups of counties. As you know, in the bill itself, it specifies in terms of numbers, and that isn't etched in concrete either. The idea is that any regional office would be responsible for no more than 500 wards, and there would be set caseloads for professional staff members, which would not be greater than 30 wards. The reason we have that in there is because we do not want one individual to have the responsibility for a tremendous number of people. That would defeat the purpose of the legislation, which is that there is someone who has the responsibility and the time to deal and monitor these wards. However, those numbers are not etched in concrete; those are suggestions, and I think that they are good suggestions. I would leave them the way they are.

I have gone through the bill, and I should point out that the way it is drafted conflicts a little with what I had originally intended. I do not intend to set up a different criteria for guardianship or conservatorship than that which presently exists. Let me explain very briefly what I mean by that.

Right now, if you have a guardianship proceeding, and you go into court with, say, a private guardian-- For example, I go in -- my grandmother and I -- and I bring about a proceeding to have my grandmother declared incompetent in order to be appointed guardian. There are established rules for guardianship that have been used for centuries -- certainly in this century -- that establish what the court has to do to declare a person incompetent. We don't want to change that; we don't want to change the procedure for declaring someone incompetent in any way. Similarly, with regard to a conservatorship, there are established rules for that proceeding. Obviously, if someone who has a conservator appointed is not incompetent, but is basically making a voluntary decision that he wants a conservator appointed for certain purposes because he doesn't feel he can handle things himself--

In other words, that is a voluntary act under the law on the part of the individual involved.

We are not in any way trying to change those criteria. I think the way the bill is set up now, it kind of gives the impression,

through the use of the term "grave disability," and by defining things such as "lack of capacity to make informed decisions, severe mental disorder, and unable to manage one's financial resources"-- All of these definitions that are being used are used because the bill sets up a procedure whereby once a guardian or conservator is appointed for a six-month period at the most, they have to come back into court every year. In other words, this sets up a procedure whereby the guardian or conservator can only be appointed for a maximum of six months. After that, there is a review on an annual basis where the person comes back into court to review whether or not he should continue to have a guardian or a conservator.

The problem I see with this procedure is that it sets up new rules as to what happens when that hearing is held. That is why the bill gets into all these statements about mental capacity, gravely disabled, etc.

I don't want to take all of the Committee's time, but what I would like to do with the bill is eliminate that hearing process. In other words, I'm convinced that when you go in for a guardianship proceeding or a conservatorship proceeding, the court makes a decision, just like they do now, as to whether or not a person is incompetent and a guardian should be appointed, or whether or not there is a need for a conservator. The court can now decide whether or not that should be for a six-month period, a period of a year, or an indeterminate period, depending upon the person, what they see when they see the individual, and the testimony brought forth. Once that determination is made, I don't see a need to have the annual hearing process where additional criteria that we are defining in the bill have to be brought forward in order for that person to continue to be either under a guardianship or a conservatorship. I think we should just follow the normal procedures.

I think on Page 9 of the bill, Section 13, it says, "The public guardian may be discharged by a court with respect to any of the authority granted over each ward upon petition of the gravely disabled person or any interested person or upon the court's own motion, when it appears that the services of the public guardian are no longer

necessary." I think that is a sufficient safeguard which exists now whereby if in that rare case -- and I do mean rare, because we are not talking about people who are young and who become mentally disturbed and go back and forth; in other words, who can be rehabilitated-- We are basically talking about people who have reached a very advanced stage of senility. You know that that person usually cannot be rehabilitated; it usually gets worse. In fact, I don't know of a single case myself among the ones we have worked with where anyone got better. We are really talking about a deteriorating condition. The chances that someone is going to be rehabilitated or come back from this advanced stage of senility-- It just doesn't happen. If it does happen, I think this section -- Section 13 -- is a sufficient safeguard for that type of situation.

What I am basically asking is that the bill be amended to take out this need to come back to court on an annual basis and to establish new criteria beyond what currently exists for guardianship or conservatorship. I think that is going to get the public guardians into a situation where they have to spend a lot of money on legal fees. There are going to be cases of going back to court everyday because if you have 500 wards in a regional office, and there are 365 days in a year, you are going to be in court everyday for one of these types of hearings, which I think are really unnecessary.

In terms of the amendments, I am talking about eliminating this need for an annual hearing, eliminating all of these phrases about grave disability and lack of capacity, because they all go to that additional hearing process. Also, I am talking about changing the department so that it would be the Department of Community Affairs, an autonomous body within that Department.

Another thing I want to add is, we are not just dealing with poor people. Let's get that out of our minds. Many of the people who I worked with through Protective Services were actually wealthy, and in some cases, extremely wealthy. So, we are not talking about poor people. There are many references in the bill about finances, kind of giving the impression initially in the "whereas clauses" that we are only dealing with people who do not have the finances to have a private

guardian. We are dealing with people who don't have a relative or a friend who can be appointed guardian. Those people can be wealthy or poor, if you understand what I am saying. If the person can afford to pay the cost of the guardianship proceedings and the administrative or bureaucratic costs of running the public guardianship office, then he should be paying part of the costs of maintaining these guardianship proceedings out of his available funds. In other words, part of the cost of running the public guardianship office which would be prorated for them.

On the other hand, if the person is indigent or has very little money, then he would be paying nothing or a minimal amount. I think the procedures set forth in the bill on Page 5 should be kept. In other words, it talks about the ability of the income or estate to pay and how the public guardian would be in a position to obtain the finances and records of the individual so that if there is the ability to pay, the individual would have to defray part of the costs of running the program. I think that is only fair, and it is also something which is consistent with current law, because the court now, as part of a guardianship proceeding, can assess costs. Even in those cases where a young attorney is appointed to be the guardian, that person can assess certain costs against the estate, as well. I think that is also consistent with the current law.

I guess what I am trying to stress here today is, I don't really think this bill, as amended, is that much of a change in the current law. What we are really trying to do is deal with those specific cases of people who don't have a friend or relative to act as a guardian. As outlined and as amended, I think the bill also would be much less costly because the only costs incurred would be for the social workers and the financial people -- the accountants -- who are monitoring these individuals. This would not include the court costs and the attorney costs we would get involved in if we had to constantly take people back into court. It is not that I am against attorneys making money, but you know, if we are looking to save money, we have to cut back on the amount of court hearings and other legal niceties.
(laughter)

Again, I thank you for having the hearing. I think the issue, although it is basically simple, can be very complicated in terms of trying to explain what we are doing. I hope I have shed some light on exactly what we are talking about and who we are trying to protect. Thanks again.

SENATOR COSTA: Thank you, Senator Pallone. There is one part that you didn't cover, which I think is important, and that is, the \$200,000 appropriation from casino revenue funds. First of all, do you have any idea if that sum is the proper amount? Would that cover it all?

SENATOR PALLONE: Well, I think the way I have outlined it in terms of setting up the Public Guardianship Program, which is primarily a social services financial management type of agency with regional offices that would cover a group of counties rather than having one for each county, that might be a good ball-park figure. Again, I don't even know where we got the figure, to tell you the truth.

SENATOR COSTA: Wouldn't it be better to have this as moneys from the General Fund because you said that some of this money would come back?

SENATOR PALLONE: Oh, yes. That is true.

SENATOR COSTA: So, wouldn't it be proper and more appropriate to get it from the General Fund because we have hesitation on moneys coming from the casino revenue funds, especially since we want to prioritize the needs of the major part of our citizens, and then make sure there is enough money in that fund for those things, rather than to help just a few citizens.

SENATOR PALLONE: I see your point, and I have no problem with that. I have personally been contacted, as we all have been, by senior citizens who have already set their priorities in terms of casino funds. So, I have no problem with the General Fund.

You also bring up a good point, which is that since some of the money may be coming back, I wonder if we might even be better-- You would have that go back into the General Fund as well.

Another option which I haven't really thought about is setting up a separate fund so that the money generated would go back

towards this specific purpose. We can argue over that as well; I don't really know.

SENATOR COSTA: That could be a line item in the Community Affairs budget, which could be for this project. Then any moneys that come in would go back into the General Fund.

SENATOR PALLONE: Right. It would go back towards it, yes.

SENATOR COSTA: It would kind of pay for itself.

SENATOR PALLONE: Sure. My intention from the beginning was not that we would necessarily use casino funds, so I have no problem with that.

SENATOR COSTA: Thank you very much. You explained it very well.

SENATOR PALLONE: Thank you.

SENATOR COSTA: Before I call the next witness, I failed to introduce two very important people -- three, I guess: David Rosen, who is our Committee staff aid; Barbara Cantrell, who is a partisan staff aid; and, Margie Krampf, who is also a partisan staff aid. Would you like to come over here and sit with us, Margie?

Our next witness will be James Cunningham, New Jersey Association of Health Care Facilities.

JAMES D. CUNNINGHAM: Thank you, Chairwoman Costa. My name is Jim Cunningham, and I am President of the New Jersey Association of Health Care Facilities. The Association represents some 180 nursing homes and licensed residential health care facilities across the State.

I am here today to give our full support for Senator Pallone's bill, S-1927, the "Public Guardianship Program for Elderly Adults Act."

A number of our member facilities have learned firsthand in recent years how important it is to be able to obtain public guardians for incompetent nursing home patients who have serious health problems requiring hospital attention. For more than a year, our Association has recognized the need for such a program and has been prodding both the Ombudsman's office and the Public Advocate to develop procedures similar to those in Senator Pallone's bill.

In order to underscore the need for such legislation, I'd like to tell you about two cases in the past few years in which nursing home residents were jeopardized by the lack of such a program.

In the first case, a nursing home was advised by a physician that an elderly female patient would go blind within two weeks without an operation. In the second case, a patient required periodic blood transfusions which could only be performed in a hospital. The reason for that was, this particular patient had very adverse reactions to transfusions, and unless he was in the acute care setting, he could die just from the transfusions. In both cases, the Ombudsman's office was eventually able to convince local Legal Aid attorneys to serve as public guardians, but only after intensive pressure. Legal Aid made it clear that their services could not be expected in the future for such functions. In both cases, and in others -- there are a number of them -- the hospital refused to perform surgery or other procedures because the incompetent patients were unable to sign legal release forms. The hospital viewed the treatments as elective, rather than as emergencies to be performed in life-threatening situations. Regarding the blind woman, I had a rather callous comment from a hospital person who said, "The woman is 80 years old and senile; what is the difference if she goes blind?" I thought that was a rather remarkable statement.

We don't know to what extent the State's new DRG reimbursement plan has influenced such decisions, although we suspect that the hospitals would not be paid for whatever time the patient would spend in bed awaiting the final appointment of a legal guardian. Perhaps hospitals would invite serious legal difficulties by administering treatment without a patient's or guardian's permission.

In the past, hospitals obtained limited guardianship for this procedure and then performed the operation. After that, the limited guardianship ended. Hospitals no longer do that. It may be due to the \$600 or \$800 cost to get that guardianship, or it may be because they are not being paid for the couple of days that the person is laying in bed waiting for the guardianship. These could be results of the DRG system.

What we do know is that the present situation is intolerable, and the lives of elderly people will continue to be jeopardized if permanent corrective measures are not taken. That is why the New Jersey Association of Health Care Facilities supports S-1927 and urges you to release it, or some version of it, as quickly as possible, so that the elderly patients do not suffer.

SENATOR COSTA: Thank you very much, Mr. Cunningham. You never did tell us the outcome of that. Was she able to get her--

MR. CUNNINGHAM: (interrupting) It took a few weeks, but the Ombudsman was able to get Legal Aid to move in. The operation eventually did take place. We have had a couple of other situations where doctors have agreed to come in and do certain things in the nursing home, even though they were somewhat risky. I called a meeting with the Ombudsman and the Public Advocate in an attempt to work out a permanent solution -- not limited guardianships, and that type of thing. It was draggy, but we didn't have new cases. After four or five months, all of a sudden a few new situations developed, and we still had no solution to the problem. We still don't today because Legal Aid doesn't want that load. The Public Advocate's office probably feels it is inappropriate for them too.

What we are saying is, the system must come, and we don't care who does it. Just put it in place.

SENATOR COSTA: It is a step in the right direction. It certainly leaves a lot to be desired. I don't know what happened to the oath of hypocrisy, or is it the Hippocratic oath?

MR. CUNNINGHAM: I think that is for doctors, not hospitals.
(laughter)

SENATOR COSTA: That is for doctors also. If anyone watched the movie last night on television regarding hospital care, it said we have a long way to go, but this is a step in the right direction. Thank you very much for your testimony.

Lois Hull, Director of the Essex County Office on Aging?
(not present)

Judith Parnes, Director of Monmouth County Protective Services for the Elderly? Are you Lois Hull?

JUDITH S. PARNES: No, I'm Judith Parnes. I don't think Lois is here.

It is nice to be here. Thanks for the opportunity to speak again. If you remember, I spoke this past summer in Burlington County about the need for a comprehensive guardianship program, so I am quite excited that Senator Pallone has introduced this bill.

As you said, I direct Protective Services for the Elderly. It is a program in Monmouth County. In addition to that, I am a consultant to various nursing home facilities in Monmouth and Ocean Counties. I see the need for guardianship from two sides, both for the elderly who live at home and the elderly who are institutionalized.

In general, I am obviously in favor of the bill. That is basically because of the two problems that this bill addresses. One is that it specifically addresses who will have the right to initiate guardianship actions, and two is because it obviously sets up the Office of Public Guardianship.

What is occurring throughout the State is, it would depend on what county that person lives in, and if that county has any program established and is willing to even initiate a guardianship action. In Monmouth County, there is no problem. In other counties where there are counterparts to my program, if an elderly person is deemed incompetent, there is a procedure whereby the county can initiate guardianship, and the person can be declared incompetent. However, in many counties, there is no established program, and no agency is willing to take on that position. This bill establishes that the County Boards of Social Services would have that responsibility.

I would like to add that I understand there are presently various protective service bills pending, and all of those bills reenforce this principle by also stating that the County Boards of Social Services would have the responsibility for initiating guardianship actions.

The second half of the bill, and more importantly, is that it establishes the Office of Public Guardianship.

Senator Pallone has already covered my points, but to summarize, some of the areas that would need better amendment clarification are:

First, I, too, agree that the Office of Public Guardianship should not be housed within the Public Advocate's office. I think that placing it under the Department of Community Affairs would be a better location for it.

Second, and very importantly, the same standards that are presently used for guardianship proceedings and conservatorship proceedings -- that is, Title 3 b. in the statutes -- would also be used for the Office of Public Guardianship.

Third, the bill discusses financial eligibility for those who may be entitled to this program. I think Senator Pallone clarified that this program -- this Office of Public Guardianship -- would be for all elderly people who either have no families who can be appointed guardians, or possibly worse than that, the situation that we get involved in, which is for those who have families who have been abusive to their elderly relatives. They would not be the appropriate persons to be appointed guardians.

Fourth, the bill addresses the former requirement that within six months and then annually, the incompetent individual would be reviewed, and the Office of Public Guardianship would need to go back to court. I agree with Senator Pallone in that I don't think this is necessary. It would be much too cumbersome to have to go back to court annually for these individuals.

Lastly, and most importantly, this bill deals with the person once they are already declared incompetent. Obviously, the strictest of standards would have to be utilized for those elderly people if they are deemed incompetent. This is not for the vast majority of the elderly, but for the very few.

In Monmouth County, we are presently only doing about one guardianship action per month. That is not many, so in terms of predicting how many people we are talking about statewide, I don't think we are talking about a lot of people if we are talking about people in the community. Then again, if we talk about the institutionalized elderly and the need for guardianship, there would be many more numbers. This would not be a program where every elderly person who is confused would be declared incompetent. It would really be for those who needed a guardian appointed.

Thank you.

SENATOR COSTA: Thank you. I would like to question you about something you said. If you come in when someone is abused by his family, can't you into court and ask to be the guardian for that individual?

MS. PARNES: Yes.

SENATOR COSTA: What happens in that case?

MS. PARNES: At the hearing, the judge would hear testimony from the family member, and then he would decide who would be appointed guardian. That has happened. When we file our affidavits, obviously we provide a lot of supporting information in terms of what the problems have historically been.

SENATOR COSTA: This bill does not cover anything like that.

MS. PARNES: This bills picks it up from the end. It would be the county courts that would have already deemed the person incompetent. The second half is, who is to be appointed? Then it would be the Office of Public Guardianship, so it really is taking it away from that problem.

SENATOR COSTA: Thank you very much.

Our next witness will be Herbert Hinkle, Director of the Division of Advocacy for the Developmentally Disabled, Department of the Public Advocate?

HERBERT HINKLE: Good morning, Senator and staff members. We appreciate the opportunity to deliver our remarks. Basically, what I have to say was put forth in greater detail in Commissioner Rodriguez's letter of July 20 to the the sponsor of the bill.

We very much appreciate the expression of support that was solicited in Senator Pallone's bill. I think some of our remarks have become moved by virtue of the comments that the Senator has made.

I just want to underscore the point that we think it would be incompatible with our functions as critic and advocate to take on lifelong responsibilities with respect to incapacitated individuals. Also, I think any other kind of advocacy program would find itself similarly compromised. One illustration would be that if one of the local offices was responsible for, let's say, 500 clients, their care

and treatment, and being concerned for their placement, it would make it rather difficult later on to turn around and perhaps criticize a particular service provider when you have placed 20 individuals with that service provider, or when you are very dependent upon that service provider to meet the needs of your other client population. It causes some problems in that regard.

We had some problems concerning the use of procedures that were different from Title 3 b., but it appears that they are going to be clarified. We very much support the idea of public guardianship. We don't think a legal vacuum should exist when someone has been found to be incompetent, and yet there is no one who can act as that person's surrogate at the appropriate time. I think the illustrations given by Mr. Cunningham on behalf of the Nursing Home Association very well underscore that need.

That is pretty much a summary of the position that we have on this bill. We would certainly be willing to work with Senator Pallone or any other party in terms of trying to develop something that will come out more along the lines that he was talking about this morning.

SENATOR COSTA: Thank you. Your arguments are now moot, and you are in favor of--

MR. HINKLE: (interrupting) We were always in favor of the public guardianship concept.

SENATOR COSTA: (continuing) --the bill as amended.

MR. HINKLE: Well, we would like to see what it looks like when it is amended, but we think there seems to be support. I'm not sure -- and, I don't say that we would necessarily disagree with this -- if the bill should be administered on the State level. It might be that Community Affairs or whatever agency is selected should issue guidelines to the public guardianship programs. It might very well be that those programs should be administered on the county level by the appropriate county offices. I simply raise that as a point for further consideration and discussion.

SENATOR COSTA: All right, thank you very much.

Mr. D'Ambrosio, Ombudsman for the Institutionalized Elderly? Welcome, it is nice to meet you. As I said, you have big shoes to fill

because John Fay was the Ombudsman, but I'm sure you will fill them well.

G.R. D'AMBROSIO, JR.: I'll try my best. First of all, I would like to thank Senator Pallone for raising this issue, as you did in your opening statement. Thank you for feeling it is a significant enough issue to have a hearing on.

This is an issue that I have looked at for quite some time as general counsel to the office I work in. I tried to review what other states have done with regard to the problem. It is a huge problem. It doesn't seem as though there is any easy solution, and it doesn't seem as though any one program is totally effective. Some are certainly better than others.

Regarding this particular bill, we, as an office, support the concept and intent. One thing we thought about as a result of reading the bill was the fact that it does not make any kind of distinction between the elderly in the community and the elderly in institutions. It sort of allows for both to be covered. In the one provision, it says that a county welfare agency, for instance, can petition the court in a guardianship proceeding.

We have consistently said that our office would be more than willing to take care of the institutionalized people who fall within the categories of this need. If the Senator felt that it might be easier-- After looking at all of the amendments that he spoke about and some that have been suggested here today, if the Senator would like to consider that, we certainly would be more than willing to work with him on making that distinction.

We are a little concerned about the staffing numbers. I don't know how the amount of \$200,000 was arrived at. It would appear to me that that might be a little short of what is needed to have a successful program; I don't know for sure. I really don't. Certainly we would not be in favor of it coming from the casino funds. I guess that is already moot; it has already been discussed.

We are somewhat concerned about the 20-day period for a hearing. Mr. Cunningham brought up certain situations that our office learned of in which 20 days might not be enough. I know it is very

difficult to get all the data that is necessary to move on one of these proceedings. Certainly 20 days isn't a lot of time, but it may be too much time for certain cases, particularly where institutionalized people are involved.

Basically, those are the comments we have. When we learned of this issue with the implementation of the DRG system and hospitals seeming to take a different approach towards this problem, I had meetings with the Department of Health to explore an existing regulation which says that hospitals must accept patients for emergency care. At that time, I asked for clarification of how emergency care was defined. I was told that there was no formal definition placed on that phrase, except that it has been interpreted to be life threatening. I was told by a Department of Health official that going blind was not life threatening; therefore, it could not be considered an emergency. That is really what got me going on this issue, because I felt that if that regulation was insufficient, it might be able to be worked on to help improve or alleviate the main problem we are discussing here today. I didn't get too far.

In general, our office is certainly in support of the bill, and we would be happy to work with the Senator if he wants to make any distinction between community elderly and institutionalized elderly.

SENATOR COSTA: Thank you very much. To get back to what you just spoke about, and addressing what Mr. Cunningham said about the patient who would go blind, in such an instance, if you were called upon at that time, would your office be able to get that person into a hospital for care? You said if it were not life-threatening, you could not do that.

MR. D'AMBROSIO: Well, when we got the inquiry, we started to look for ways we could help in order to get the person into the hospital, short of moving ourselves as a limited guardianship of some sort. I thought we could rely on the regulation that called for hospitals giving emergency care, but that was when it was brought to my attention that going blind could not be considered an emergency. Therefore, that avenue was closed to me.

The only other avenues I could pursue were either moving through our own legal staff -- we are very short-staffed; if we had more staff, we would be happy to move along those lines -- or relying on the various legal service entities throughout the State. That is eventually what I had to do. I had to go to one of those entities and say, "Could you do us a favor?" That is how it worked.

SENATOR COSTA: You would think that common sense would prevail in something like that. Do we have to have legislation to define things such as that?

MR. D'AMBROSIO: Yes, I would certainly think that after eight years of a regulation being in place, there may have been an opportunity somewhere along the line to formally define what a term means if it has been questioned. Maybe that is not the case.

SENATOR COSTA: I was just thinking of whether it would have to be done by a law or if it could be done by a regulation.

MR. D'AMBROSIO: I don't know. The result of our conversations led to a letter put out by the Commissioner to all hospital administrators, which sort of elaborated on what might be considered or looked at as a possible emergency. Maybe that helped to alleviate the problem, but it certainly hasn't solved it.

SENATOR COSTA: Thank you very much.

MR. D'AMBROSIO: Thank you.

SENATOR COSTA: Karen Brindle, Division on Aging, Department of Community Affairs?

GEORGE CONSOVOY: I'm not Karen. Karen is over there.

SENATOR COSTA: George Consovoy.

MR. CONSOVOY: Thank you. We don't look alike. (laughter)

Most of our problems have been addressed by Senator Pallone and the other speakers, but there are a couple of avenues I would like to talk about.

First of all, let me thank you for permitting me to be Karen Brindle this morning. (laughter) The Division on Aging is extremely happy to support the concept of this bill. We feel there is a need to provide guardianship services to gravely disabled elderly people who do not have the financial means to compensate a court-appointed private

guardian. We believe that this type of legislation is long overdue.

SENATOR COSTA: Could you speak just a little louder? I don't think anyone can hear you.

MR. CONSOVOY: A little louder, all right. There are two problems that haven't been addressed. We at the Division on Aging also see real problems with the 30 wards per one staff worker provision in the legislation. Managing just one person's estate and performing the role of guardian can often prove difficult. It can indeed prove to be a complex task. Multiply that by 30, and you certainly create a situation that could be most overwhelming. We believe that the ratio should be significantly reduced.

In addition, qualifications for persons who would serve as guardians are not set forth in the legislation. In our opinion, this is a most serious omission. Guardianship is a very, very important responsibility.

We are talking about the management of a person's life savings, property, etc., and his health. It is essential that the people providing guardianship services should be people of unquestionable integrity and honesty, have no possibility of personal gain from the management of an estate, and have adequate experience in the handling of a person's personal property.

The other issue that was brought up this morning, of course, is the placing of this particular office in the Department of Community Affairs, which we certainly agree with for various reasons. We have the Division on Aging, and we have the Ombudsman, of course, in the Department of Community Affairs. We feel that they would probably all work together, and they would be in constant contact with each other.

Also, regarding the issue of casino funds, which the Chairwoman so ably discussed, we have a problem with that because of the fact that there is so much legislation presently in the hopper. Legislation has not been passed calling for casino funds, and it just isn't conceivable to add another one. We did a study about six months ago -- the Division on Aging and myself -- just to see where we were. This will probably blow your mind, but approximately \$600 million dollars is placed in legislation that is presently pending. Probably

none of it will be passed, but the demands on the few dollars that are left-- I think there are very few dollars left. The last time I heard, it was \$50 million. Well, if you take \$600 million and put it with \$50 million, with everybody grabbing--

Once again, I would like to urge the Chairwoman to take another try at her concurrent resolution calling for a study of casino funds by publicly asking the leaders of both houses to appoint the people to that very, very important committee.

That is all I have to say.

SENATOR COSTA: Thank you, Mr. Consovoy. You spoke about the qualifications of the guardians. If that is in the Department of Community Affairs, wouldn't that be taken care of?

MR. CONSOVOY: That would have to be taken care of in the rules and regulations, I would hope.

SENATOR COSTA: All right. It doesn't necessarily have to be spelled out in the bill.

MR. CONSOVOY: No, not in legislation, but it should be spelled out.

SENATOR COSTA: Would you feel more comfortable having the Omsbudman's office taking care of the institutionalized, while another agency would take care of those who are not institutionalized?

MR. CONSOVOY: Mr. D'Ambrosio, of course, is here, and I think they are actually charged with that. I don't know the legislation, Jack, but aren't you charged with that?

MR. D'AMBROSIO: (speaking from audience) We always have the right to take legal action. (Because speaker is not near microphone, transcriber unable to hear remaining remarks.)

MR. CONSOVOY: Well, that could be part of the legislation then if it isn't. Just by mentioning it in the legislation, I think it would-- I think they can do it.

SENATOR COSTA: All right. Let's suggest it to Senator Pallone, so that he can take that under advisement.

MR. CONSOVOY: Sure. I think he ought to put it in just to lock it up. Of course, they are with the institutionalized elderly at all times. I know Jack, and I know the gentleman who spoke before him. I think both are fine people.

SENATOR COSTA: I think Mr. Hinkle wants to say something about that.

MR. HINKLE: (speaking from audience) If I may just interject something, I think a distinction has to be made between initiating an action for guardianship and actually receiving the subsequent appointment as guardian. I believe the Omsbudsman has the authority to do that.

SENATOR COSTA: Just a minute. Are our hearing reporters able to hear him?

HEARING REPORTER: No.

SENATOR COSTA: Will you come to one of these microphones and repeat that so we can have it for the record?

MR. HINKLE: What I was saying was, I think there is a distinction to be made between initiating an action for the appointment of a guardian and actually receiving the appointment as guardian. I believe the Ombudsman has the authority to initiate the guardianship action, but the law is not clear. I don't know if it is prohibited, but it certainly is not addressing the subject of actually receiving the appointment and discharging the duties of guardian. That is the area that I think should be looked at rather carefully. Just like our office, the Ombudsman might be compromising himself by discharging that and also serving as critic concerning some of the decisions that his office actually put into motion. It is just like the quality of care that is being provided in a facility where the Ombudsman's office, in fact, placed one of its wards.

SENATOR COSTA: Thank you, Mr. Hinkle. I think this is very important. If Mr. D'Ambrosio would like to come back and say something--

MR. D'AMBROSIO: The point I was making was that we would be interested in initiating the proceedings. We clearly would not be in favor of serving in both capacities; I would see that as a conflict. We would want to initiate the proceedings rather than have a county welfare agency come into an institution to initiate the proceedings.

SENATOR COSTA: I see. All right. Thank you for the clarification. I appreciate it.

Senator Pallone, would you like to come up here, please?

SENATOR PALLONE: I just want to reiterate that point. The Public Guardianship Office would still act as the guardian for either the institutionalized people or people from the community. The way I understand the Ombudsman, he is asking that he be able to initiate it the same way that the county board does, rather than the Ombudsman actually serving as the public guardian.

The other thing I want to say is, the bill is set up so that the agency would be the public guardian. In other words, the public guardianship agency would be appointed the guardian; therefore, the rules and regulations regarding the employees-- I can see how we would have to have rules and regulations with regard to the social workers or the financial managers and accountants who work for the agency. I am just trying to clarify that we intend for the agency to actually be appointed by the court -- not an individual who works for the agency, but rather the agency itself. With regard to the people who work under the agency, you would have to have rules in terms of their qualifications, but not the qualifications for a guardian. That would be the agency.

SENATOR COSTA: Thank you, Senator Pallone. Diane Smith, Mercer County Legal Services for the Elderly?

By the way, thank you, Mr. Consovoy.

DIANE K. SMITH, ESQ.: Thank you for the opportunity to speak. I am the Director of the Mercer County Legal Services Project for the Elderly, which is funded under Title 3 b. of the Older American Act. We provide civil legal services to residents of Mercer County who are age 60 or older. I find in my work there that we receive probably, I would say, one or two calls each week -- out of a population of about 60,000 seniors in Mercer County -- saying that this bill would be of assistance to those types of people. Generally it is a well-intentioned friend, neighbor, or agency person who calls and describes some situation where an elderly person is at a loss.

For instance, last week's call was from a woman who was in her own home. She had a small savings account, but she didn't use it to pay her bills. Her gas and electricity had been turned off, and she existed throughout the summer that way. But, when the cold snap

started, it became an emergency. The Board's response was, "Well, we must take her out and have her institutionalized." That is because they don't see any other alternative.

If there were a possibility of intervention before it became an emergency situation, people like this could be maintained in their homes with the assistance of social workers and financial managers. They would not have to be institutionalized in places where their life styles are severely curtailed. They also become wards of the State at that point.

I don't think the importance of this bill can be underestimated.

As far as the Legal Aid Society is concerned, I must say something about them since I share office space with them, and I am under a similar mandate. It is not that the Legal Aid Societies do not want to get involved in these situations. Our Legal Aid Society is mandated to represent individuals. When someone calls -- it is generally an agency person -- and says, "You must institute a proceeding to have this person declared incompetent," we have to act as an adversary to the interests of the client because a guardianship proceeding is always an adversary proceeding. The client needs to be represented by an attorney, and Legal Aid is generally -- I know our office is, and most offices I've spoken with are -- willing to take the appointment to represent the alleged incompetent. But, we cannot institute a proceeding against their interests -- their own wants and interests, not what society believes to be their best interests. Sometimes they are the same; often they are not.

One thing I would suggest in the bill is, it provides that the Board of Social Services or an agency may institute a proceeding. I would try to strengthen that language because I have a fear that the boards that feel overwhelmed by their duties would not institute the proceeding unless there was some mandate to force them to do that. We would be in the same situation that people find themselves in now where there is a need for the proceeding, but no one will institute it. So, I would suggest that that language be strengthened.

My one criticism of the bill is in Section 9 c. where a proposed ward may be compelled to execute requests and authorizations to gain access to confidential records. I don't believe that a proposed ward should be compelled to do this without the protection of the court and the discovery proceedings that are currently available. At this point in a proceeding, they are only a proposed ward. They have not been declared incompetent. I would suggest that this section be amended so that protective orders would be available and the court could intervene in these situations, just as they do in other civil litigation when they weigh the needs of the party to obtain the information and the rights of the other party as to the confidentiality and privacy, rather than have a blanket statement where the ward must, in all situations, reveal this information.

You have also asked us to testify as to the need for a public guardian as opposed to the current use of a private guardian. I believe that a public guardian is very important, as Senator Pallone said. Generally, the private guardians who are appointed when there are no relatives are young attorneys. Since I am a young attorney, I don't have much against them, (laughter) but, they are certainly not trained to be guardians. They do fine with financial management, and I am very comfortable with that aspect, but they have no idea how to deal with the daily personal problems and needs of elderly persons. This bill would take care of that by separating those two functions and having a financial manager with the expertise to deal with that aspect of guardianship and having a social worker with the expertise to deal with the personal aspect of guardianship.

Thank you.

SENATOR COSTA: Thank you very much, Ms. Smith. We appreciate your comments. Is there anyone else in the audience who would like to speak? (affirmative response) Will you come forward and give us your name, please?

JANET KENNEDY: My name is Janet Kennedy, and I represent the Christian Science Committee on Publication for New Jersey. In this position, I speak on behalf of those residents of this State who are adherent of the Christian Science religion.

One important part of my duties concerns legislation, that is, watching proposed bills to ensure the right of Christian Scientists to practice their religion, free from any restriction or limitations.

I have submitted an amendment to this bill to Senator Pallone, with copies to all Committee members. Senator Pallone has responded to me in writing as accepting and supporting the amendment. It would appear on Page 3, Section 3, as new "part j." The amendment simply provides a safeguard so that a person would not be considered to be in need of a guardian solely because he relies on prayer for healing in accordance with his religious tenets.

I have extra copies. Would you like one?

SENATOR COSTA: Yes, please.

MS. KENNEDY: Do you want me to explain any further?

SENATOR COSTA: I don't believe so. I think it is quite clear, and I think Senator Pallone said he has already--

SENATOR PALLONE: (interrupting) I have to apologize because I did bring that along today, but I forgot to mention it. The only question I have is, since we are not changing the basic criteria for the guardianship or the conservatorship proceedings, is this something that should be in the bill? Why don't you explain that to us again. Where exactly would that be in the bill?

MS. KENNEDY: It would be on Page 3, Section 3, "part j.," so it would be at the very end.

SENATOR PALLONE: And, what would it say?

MS. KENNEDY: It would say, "No person shall be considered gravely disabled, lack in capacity to make informed decisions about"--

SENATOR PALLONE: (interrupting) Okay, I understand. My only problem with this now is, since I intend, through amendments, to eliminate all the language about lack of capacity-- In other words, I don't want to set up a separate procedure for a guardian or a conservator. Rather, I would use the procedures that currently exist. I don't want to get into defining terms because I don't think that is appropriate. I'm wondering whether or not this would go to something we have eliminated in the bill; therefore, it wouldn't really be appropriate anymore. I don't know whether or not this qualification

currently exists when you go through a private guardianship proceeding. Do you have the answer to that?

MS. KENNEDY: No, I don't.

SENATOR COSTA: May I ask a question with reference to that? You're saying that based on religious beliefs, where someone would be declared incompetent-- If a person is incompetent, it wouldn't be based on his beliefs; it would be based on other criteria, wouldn't it?

MS. KENNEDY: As long as it wouldn't be based upon the fact that he was not using medical treatment, but was relying upon his religious beliefs for healing. Then it would be fine.

Let me explain a little better. This will include just a small bit about the Christian Science Church. The Christian Science Church is a worldwide church with approximately 3,200 branches in this country and overseas. Our church was founded over 100 years ago with headquarters in Boston, Massachusetts. Christian Scientists rely upon God for their total health. Instead of receiving medical treatment when experiencing an illness or injury, Christian Scientists rely on spiritual means through prayer for healing. Instead of going to a physician, they engage a Christian Science practitioner to support them in prayer. If they are in need of physical care, rather than go to a hospital, they go a Christian Science sanatorium. If nursing services are needed, they will engage in a Christian Science nurse.

In place of health and accident insurance policies providing medical benefits, Christian Scientists may have insurance policies which provide coverage for expenses of a Christian Science practitioner and a Christian Science sanatorium.

Since founding the Christian Science Church, there have been several generations of citizens in this State who have totally relied upon Christian Science to meet all their health needs, having never had physical examinations, medical treatment, nor having taken drugs or medicine of any kind. As Christian Scientists, they do not ignore disease or injury. Whenever they have a physical problem, they turn solely to God and the application of Christian Science for healing.

A Christian Scientist who does not follow the conventional method of medical treatment when suffering from an illness, but who

relies on prayer for healing, could inadvertently be considered to be neglectful. A well-meaning, but misinformed neighbor, for example, could hastily conclude that a Christian Scientist was neglecting himself because he did not get medical treatment. As a result, an investigation of this might take place, causing a Christian Scientist concern, and putting him in the position that he would need a public guardian, simply because he was not using the conventional means for treatment.

SENATOR COSTA: Thank you very much. We'll leave it with Senator Pallone.

SENATOR PALLONE: Senator, may I ask one question? It was just suggested to me that this amendment in terms of Paragraph j. is not appropriate since we are taking out all the material about defining a guardianship. We don't want to change that. What I think we probably should do is -- I'll talk to you about this afterwards -- where we talk about the public guardian's role, we could put in some statement which would say that a public guardian, once appointed, should take into consideration what you are suggesting, you know, spiritual means through prayer in lieu of medical treatment.

SENATOR COSTA: As part of his regulations?

SENATOR PALLONE: As part of his regulations regarding what he has to do as a public guardian. This is similar to what I think you did with the Ombudsman's office when you talked about furnishing nonmedical, remedial treatment and keeping that in mind when you are dealing with the person who is actually being treated. We can probably incorporate that into this.

MS. KENNEDY: Okay, thank you.

SENATOR COSTA: Thank you very much. Is there anyone else who wishes to be heard? (negative response) Hearing no others and seeing no others, I would like to thank everyone for their contributions to this public hearing. I'm sure Senator Pallone appreciates all the input. I do too. Thank you.

(Hearing concluded)



