

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1995**

**S**

**1**

**SENATE BILL 872**

Short Title: Guardianship Changes.

(Public)

---

Sponsors: Senator Dannelly.

---

Referred to: Children and Human Resources

---

April 27, 1995

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO SUPPORT THE APPOINTMENT OF FAMILIES AND INDIVIDUALS  
3 AS GUARDIANS, TO SUPPORT THE EXPANSION AND DEVELOPMENT OF  
4 PRIVATE NONPROFIT CORPORATIONS AS GUARDIANS, TO PROVIDE  
5 THAT LOCAL DEPARTMENTS OF SOCIAL SERVICES BE THE ONLY LOCAL  
6 HUMAN RESOURCES AGENCY TO SERVE AS GUARDIANS, TO  
7 APPROPRIATE FUNDS FOR GUARDIANSHIP SERVICES, AND TO MAKE  
8 OTHER CHANGES.

Whereas, the State of North Carolina supports the right of all citizens to have a fully qualified guardian should one be needed; and

Whereas, the State of North Carolina supports the current statutory provisions for appointment of a guardian for an incompetent adult, including the priority order for appointment of guardians; and

Whereas, the appointment of a guardian should be a last resort and alternative solutions should be explored and utilized before a guardian is appointed; and

Whereas, individuals who may be able to serve as guardians for incompetent adults face multiple barriers in doing so and need assistance to overcome these barriers; and

Whereas, corporations currently authorized in North Carolina to provide guardianship are not able to do so throughout the State or for adults who become incompetent due to certain disabilities, conditions, or diseases; and

Whereas, the growth in the need for public agencies to be appointed as guardians, when no individual or corporation is available, has averaged 20% percent since 1989, there is a crisis in the public sector due to this growth; and

Whereas, the current statute provides for area mental health programs, local health departments, and county departments of social services to serve as disinterested public agent guardians, area mental health authorities and health departments find it inappropriate to do so and county departments of social services, which have served 80% of this need, are willing to continue to meet this need; and

Whereas, funding has not been available to support the implementation of a system which promotes the appointment of individuals and corporations, or adequately provides for guardianship services from local human resources agencies; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1202(4) reads as rewritten:

"(4) The term 'disinterested public agent' means:

- a. ~~The director or assistant directors of a local human resources agency, or county department of social services or area mental health, developmental disabilities, and substance abuse authority;~~
- b. An adult officer, agent, or employee of a State human resources ~~agency—agency~~ appointed to serve as a guardian prior to July 1, 1995; or
- c. The director or assistant directors of a local health department appointed to serve as a guardian prior to July 1, 1995.

The fact that a disinterested public agent is employed by a State or local human resources agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian."

Sec. 2. Effective July 1, 1996, G.S. 35A-1202(4), as rewritten by Section 1 of this act, reads as rewritten:

"(4) The term 'disinterested public agent' means:

- a. The director or assistant directors of a county department of social ~~services or area mental health, developmental disabilities, and substance abuse authority;~~ services;
- b. An adult officer, agent, or employee of a State human resources agency appointed to serve as a guardian prior to July 1, 1995; or
- c. ~~The director or assistant directors of a local health department appointed to serve as a guardian prior to July 1, 1995.~~ human resources agency, other than a county department of social services, appointed to serve as a guardian prior to July 1, 1996.

The fact that a disinterested public agent is employed by a State or local human resources agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian."

Sec. 3. G.S. 35A-1213 is amended by adding a new subsection to read:

1        "(d1) A disinterested public agent who is a director or assistant director of a local  
2 human resources agency other than a county department of social services and who is  
3 appointed by the clerk to serve as guardian prior to July 1, 1996, is authorized and  
4 required to continue serving as guardian and may not seek the appointment of a different  
5 guardian except according to the provisions of subsection (d) of this section."

6            Sec. 4. G.S. 35A-1216 reads as rewritten:

7 **"§ 35A-1216. ~~Rule-making power~~ Duties of Secretary of Human Resources.**

8        (a) The Secretary of the Department of Human Resources shall issue rules and  
9 regulations for the implementation of the guardianship responsibilities of disinterested  
10 public agents. The rules and regulations shall provide, among other things, that  
11 disinterested public agents shall undertake or have received training concerning the  
12 powers and responsibilities of ~~guardians.~~ guardians, and shall include procedures  
13 developed by the Secretary to handle and avoid conflicts of interest in the delivery of  
14 guardianship services.

15        (b) The Secretary shall promote the use of family members and other individuals  
16 and corporations as guardians and shall provide training for family members and  
17 individuals as guardians. The Secretary shall provide information on the resources  
18 available to guardians in meeting the needs of their wards and shall develop and  
19 distribute written materials on the filing of a petition for incompetence and the roles and  
20 responsibilities of guardians.

21        (c) The Division of Social Services shall administer the rules and regulations  
22 issued under this section and shall establish written agreements as appropriate with other  
23 Divisions in the Department regarding their involvement in the promotion of family  
24 members and other individuals and corporations to serve as guardians.

25        (d) Budget requests submitted by the Department to the Governor pursuant to  
26 Article 1 of Chapter 143 of the General Statutes shall reflect the order of priority for  
27 guardianship appointment as contained in G.S. 35A-1214."

28        Sec. 5. There is appropriated from the General Fund to the Department of  
29 Human Resources, Division of Social Services, the sum of one million eighty thousand  
30 dollars (\$1,080,000) for the 1995-96 fiscal year and the sum of one million five hundred  
31 thousand dollars (\$1,500,000) for the 1996-97 fiscal year to be used to expand existing  
32 private nonprofit guardianship corporations and to develop new private nonprofit  
33 guardianship corporations.

34        Sec. 6. There is appropriated from the General Fund to the Department of  
35 Human Resources, the sum of one hundred forty-five thousand eight hundred fifty dollars  
36 (\$145,850) for the 1995-96 fiscal year and the sum of one hundred forty-two thousand  
37 four hundred forty dollars (\$142,440) for the 1996-97 fiscal year. Of the funds  
38 appropriated under this section, the Division of Social Services shall receive eighty-five  
39 thousand eight hundred fifty dollars (\$85,850) for the 1995-96 fiscal year and the sum of  
40 eighty-two thousand four hundred forty dollars (\$82,440) for the 1996-97 fiscal year to  
41 be used to fund a Program Consultant II position in the Division with the responsibility  
42 for handling additional duties placed on the Division resulting from this act and to  
43 publish written materials on the filing of a petition for incompetence and the roles and

1 responsibilities of guardians. Of the funds appropriated under this section, the Division of  
2 Mental Health, Developmental Disabilities, and Substance Abuse Services shall receive  
3 sixty thousand dollars (\$60,000) for the 1995-96 fiscal year and the sum of sixty  
4 thousand dollars (\$60,000) for the 1996-97 fiscal year to be used to conduct specialized  
5 training on the concerns and advocacy needs of persons with developmental disabilities  
6 and mental illness related to guardianship.

7       Sec. 7. There is appropriated from the General Fund to the Department of  
8 Human Resources, Division of Social Services, the sum of eight hundred fourteen  
9 thousand seven hundred eighty dollars (\$814,780) for the 1995-96 fiscal year and the sum  
10 of one million three hundred ninety-four thousand one hundred seventy-eight dollars  
11 (\$1,394,178) for the 1996-97 fiscal year to be allocated to county departments of social  
12 services to provide guardianship services. Each county shall be allocated a proportional  
13 amount of these funds based on its respective case loads as reported to the Division of  
14 Social Services. Funds for guardianship services shall be matched by counties at a rate of  
15 fifty-five percent (55%) effective July 1, 1995, forty-five percent (45%) effective July 1,  
16 1996, and twenty-five percent (25%) effective July 1, 1997. Counties may use federal  
17 funds or county funds to meet matching requirements.

18       Sec. 8. The Department of Human Resources shall report to the 1997 General  
19 Assembly and to the Fiscal Research Division of the Legislative Services Office by  
20 March 15, 1997, on the use of funds allocated pursuant to this act. This report shall  
21 include an analysis of the guardianship services provided, of the number of wards served  
22 by the Department and nonprofit private corporations, and of the guardianship training  
23 provided to family members and individuals.

24       Sec. 9. This act becomes effective July 1, 1995, except that Section 2 of this  
25 act becomes effective July 1, 1996. Sections 1, 2, 3, and 8 of this act become effective if  
26 and only if appropriations contained in Sections 6 and 7 of this act are made by the 1995  
27 General Assembly. Sections 4 and 5 of this act become effective if and only if  
28 appropriations contained in Section 6 of this act are made by the 1995 General Assembly.