Mass. needs a public guardian program, but with strong safeguards

The Globe is right: Massachusetts needs a publicly funded guardian program for adults ("Guardians speak for incapacitated adults who can't," Editorial, Aug. 31). No one should remain unnecessarily hospitalized because no qualified decision-maker is available, and the Commonwealth cannot continue relying on overworked volunteers. Public guardians should be trained, compensated, independently monitored, and assigned manageable caseloads.

However, support for public guardianship should not mean accepting default surrogacy without sufficient safeguards. Under the proposed law, the physician who determines that a patient lacks capacity could also select the surrogate. Meanwhile, the hospital has a financial and operational interest in completing the patient's discharge. Even when everyone acts in good faith, that concentration of authority creates a conflict that legislation must address.

Capacity is not all or nothing. Dementia, disability, age, or difficulty communicating should never replace an individualized assessment. Before appointing a surrogate, providers should offer communication accommodations and supported decision-making. Patients should receive understandable notice, retain the right to object, and have access to independent review.

A surrogate must follow the patient's known wishes and values, not simply approve the hospital's preferred plan. Decisions involving institutional placement, restraint, or other serious restrictions deserve heightened scrutiny.

Massachusetts should establish a strong public guardian program while ensuring that surrogacy remains limited, independent, and accountable. Success should be measured not merely by faster discharges but also by whether people receive appropriate care in the least restrictive setting while retaining the greatest possible control over their lives.

Protection is necessary. Protection without voice becomes paternalism.

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