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EDITORIAL

Guardians speak for incapacitated adults who can't

Massachusetts needs a system to pay guardians for indigent adults.

By The Editorial Board Updated August 31, 2026, 4:00 a.m.

Massachusetts should establish a public guardian program through which qualified people are paid to be guardians for indigent clients. .SHOCK/ADOBE

The heartbreaking scenario occurs daily: A patient is ready to leave the hospital for a nursing home or rehabilitation facility, but they have dementia or another ailment that

renders them incapable of decision-making. No family member is authorized to sign them into another facility, so the patient remains hospitalized.

When someone lacks a guardian, it stops the patient from getting care they need. It also creates a bottleneck in hospital discharges, tying up a bed that could be used for someone else.

According to the Massachusetts Health and Hospital Association, in May, Massachusetts hospitals reported having 70 patients awaiting a guardian before they could be discharged. A report on guardianship released by the Massachusetts Department of Public Health on Aug. 4 estimates that there are more than 3,000 patients a year who require appointment of a guardian and whose hospital discharge is delayed.

To say Massachusetts has a system for appointing guardians for incapacitated adults would be an exaggeration. Rather, Massachusetts has a patchwork of solutions that's resulted in a guardian shortage with no guarantee guardians are providing appropriate services.

Lawmakers should make it easier to designate a family member as a temporary decision-maker. More importantly, Massachusetts should establish a public guardian program through which qualified people are paid to be guardians for indigent clients.

Maintaining the status quo means the problem will only worsen as baby boomers age and medical advances keep more people alive. Mass General Brigham associate general counsel Joshua Abrams said already, compared to several years ago, there are fewer available guardians, a greater need, and more overwork among guardians.

"We have an aging population, many of whom don't have family," said Boston attorney Brandon Saunders, who handles guardianship cases. "We're going to have to face the reality that we have to protect our elders, and it will cost money."

In the best-case scenario, a person designates a health care proxy before they become incapacitated. Without that, a relative, friend, clergy, or acquaintance can petition the court to be declared a guardian.

The system breaks down, however, when a patient doesn't have someone to be their guardian.

There are three state agencies that help people find and pay for guardians, but eligibility and space are limited. There are separate court-ordered programs for people in nursing homes with MassHealth coverage or in psychiatric facilities, with guardians reimbursed up to $100 a month. If a patient has money, a professional guardian can petition the court for reimbursement for the guardian's work.

But if the patient is indigent and ineligible for state programs, the system relies on unpaid volunteers — often lawyers or social workers working pro bono or retirees. This is unsustainable.

The Department of Public Health report says hospitals' attorneys typically approach four to 13 people to find one guardian. Saunders said his firm files about 50 petitions a month on behalf of hospitals and families, and a dearth of professional guardians causes "huge delays." "It's not uncommon to continue a hearing week after week because we haven't found someone," Saunders said. The system doesn't ensure guardians are properly trained or have a caseload that lets them attend to each client.

The best solution would be to create a system that imposes qualification and training requirements on guardians, with funding that ensures guardians are paid for their time, even if a patient has no money.

The Massachusetts Guardianship Policy Institute has spent six years piloting a demonstration program. Wynn Gerhard, the institute's Elder Justice Fellow, said the institute uses $1 million in private funding to pay people to serve as a "guardian of last resort" for 80 clients in Suffolk, Plymouth, and Norfolk counties. Each guardian is

limited to 20 clients, and the institute spends around $11,000 annually per client. Gerhard said nursing homes are happy to have guardians who return their calls, and guardians have helped patients leave nursing homes for community-based living. "We try to make the point that this is what good guardianship is, this is how it can be done, and it saves money and is better for the health care system and patients," Gerhard said.

The Department of Public Health report estimates that creating a public guardianship program for 3,100 to 4,950 people a year would cost between $31 million and $54.5 million. But if fewer people need services, the cost would be less. At least three states — Colorado, Washington, and Oregon — have state-funded guardianship programs, which cost between $686,000 and $8 million to serve between 81 and 420 people, according to the DPH report.

The report also recommends passing a "default surrogate" law, creating an expedited way for family members to become medical decision-makers when someone has no health care proxy. Massachusetts is one of just four states without this type of law. A bill reported out of the Judiciary Committee in 2025 would let a physician appoint a surrogate decision-maker, with priority going to the patient's spouse, then adult children, then other family members, with guidelines the physician and surrogate must follow. There are legitimate concerns about whether default surrogate laws adequately protect patients' rights. But there are ways to craft a law narrowly, so a surrogate is given limited powers for a limited time.

Hospitals want change because stuck patients impact their bottom line, but the more important reason to change policy is common human decency: If an elderly woman alone in the hospital needs someone to speak for her, she should have a qualified person to do so.

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