

STATE OF NEW YORK

4722

2019-2020 Regular Sessions

IN SENATE

March 22, 2019

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to requiring petitioners for appointment of a guardian to identify other persons who may be able to manage the affairs of an incapacitated person

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (e) of section 81.03 of the mental hygiene law,
2 as amended by chapter 438 of the laws of 2004, is amended to read as
3 follows:

4 (e) "available resources" means resources such as, but not limited to,
5 all persons identified in subparagraphs (i) through (iv) of paragraph
6 one of subdivision (g) of section 81.07 of this article, visiting nurs-
7 es, homemakers, home health aides, adult day care and multipurpose
8 senior citizen centers, powers of attorney, health care proxies, trusts,
9 representative and protective payees, and residential care facilities.

10 § 2. Paragraph 7 of subdivision (a) of section 81.06 of the mental
11 hygiene law, as amended by chapter 438 of the laws of 2004, is amended
12 to read as follows:

13 7. the chief executive officer, or the designee of the chief executive
14 officer, of a facility in which the person alleged to be incapacitated
15 is a patient or resident, except for where the petition is brought
16 primarily for purposes of bill collection or resolving a bill collection
17 dispute. Provided, however, where there is no other legally authorized
18 or otherwise available resource, the chief executive officer, or desig-
19 nee of the chief executive officer, of such facility described in this
20 article may file a petition under this article where a guardian is need-
21 ed to apply for or engage in planning necessary to establish eligibility
22 for medical assistance as provided under title eleven of article five of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 the social services law for the benefit of the person alleged to be
2 incapacitated.

3 § 3. Subparagraph (iii) of paragraph 1 of subdivision (g) of section
4 81.07 of the mental hygiene law, as amended by chapter 438 of the laws
5 of 2004, is amended to read as follows:

6 (iii) any person or persons designated by the alleged incapacitated
7 person with authority pursuant to [~~sections 5-1501, 5-1505, and 5-1506~~]
8 title fifteen of article five of the general obligations law, or
9 sections two thousand nine hundred [~~five~~] sixty-five and two thousand
10 nine hundred eighty-one of the public health law, if known to the peti-
11 tioner; and

12 § 4. Paragraph 14 of subdivision (a) of section 81.08 of the mental
13 hygiene law, as added by chapter 698 of the laws of 1992, is amended to
14 read as follows:

15 14. the available resources, if any, that have been considered by the
16 petitioner, the steps taken to identify available resources, and the
17 petitioner's opinion as to [~~their sufficiency and reliability~~] why such
18 resources are not sufficient or reliable enough to meet the alleged
19 incapacitated person's needs without the appointment of a guardian;

20 § 5. Paragraph 15 of subdivision (a) of section 81.08 of the mental
21 hygiene law is renumbered paragraph 18, and three new paragraphs 15, 16
22 and 17 are added to read as follows:

23 15. for all available resources considered by the petitioner, the
24 name, address, telephone number along with any other contact informa-
25 tion, relationship to the alleged incapacitated person and any documents
26 known to the petitioner that grant the available resource legal authori-
27 ty to manage the personal, medical and/or financial affairs of the
28 alleged incapacitated person;

29 16. if the petitioner seeks to revoke any lawfully executed appoint-
30 ment or delegation made by the alleged incapacitated person pursuant to
31 title fifteen of article five of the general obligations law, section
32 twenty-nine hundred sixty-five or twenty-nine hundred eighty-one of the
33 public health law, or any living will, the petition shall set forth
34 specific reasons for the revocation;

35 17. an affirmative statement that the petition is not brought primari-
36 ly for the purpose of bill collection or resolving a bill collection
37 dispute;

38 § 6. Subparagraph (xi) of paragraph 5 of subdivision (c) of section
39 81.09 of the mental hygiene law, as amended by chapter 438 of the laws
40 of 2004, is amended to read as follows:

41 (xi) has the person alleged to be incapacitated made any appointment
42 or delegation pursuant to [~~section 5-1501, 5-1505, or 5-1506~~] title
43 fifteen of article five of the general obligations law, section two
44 thousand nine hundred sixty-five or two thousand nine hundred eighty-one
45 of the public health law, or a living will;

46 § 7. Paragraph 1 of subdivision (d) of section 81.19 of the mental
47 hygiene law, as added by chapter 698 of the laws of 1992, is amended to
48 read as follows:

49 1. any appointment or delegation made by the person alleged to be
50 incapacitated in accordance with the provisions of [~~section 5-1501,~~
51 ~~5-1601 or 5-1602~~] title fifteen of article five of the general obli-
52 gations law and sections two thousand nine hundred sixty-five and two
53 thousand nine hundred eighty-one of the public health law;

54 § 8. The opening paragraph of subdivision (e) of section 81.19 of the
55 mental hygiene law, as added by chapter 698 of the laws of 1992, is
56 amended to read as follows:

1 ~~[Unless the court finds that no other person or corporation is avail-~~
2 ~~able or willing to act as guardian, or to provide needed services for~~
3 ~~the incapacitated person, the]~~ The following persons or corporations may
4 not serve as guardian:

5 § 9. Paragraph 2 of subdivision (b) of section 81.22 of the mental
6 hygiene law, as added by chapter 698 of the laws of 1992, is amended to
7 read as follows:

8 2. revoke any appointment or delegation made by the incapacitated
9 person pursuant to ~~[sections 5-1501, 5-1601 and 5-1602]~~ title fifteen of
10 article five of the general obligations law, sections two thousand nine
11 hundred sixty-five and two thousand nine hundred eighty-one of the
12 public health law, or any living will.

13 § 10. Subdivision (d) of section 81.29 of the mental hygiene law, as
14 amended by chapter 176 of the laws of 2008, is amended to read as
15 follows:

16 (d) If the court determines that the person is incapacitated and
17 appoints a guardian, the court may modify, amend, or revoke any previ-
18 ously executed appointment, power, or delegation under ~~[section 5-1501,~~
19 ~~5-1505, or 5-1506]~~ title fifteen of article five of the general obli-
20 gations law or section two thousand nine hundred sixty-five of the
21 public health law, or section two thousand nine hundred eighty-one of
22 the public health law notwithstanding section two thousand nine hundred
23 ninety-two of the public health law, or any contract, conveyance, or
24 disposition during lifetime or to take effect upon death, made by the
25 incapacitated person prior to the appointment of the guardian if the
26 court finds that the previously executed appointment, power, delegation,
27 contract, conveyance, or disposition during lifetime or to take effect
28 upon death, was made while the person was incapacitated or if the court
29 determines that there has been a breach of fiduciary duty by the previ-
30 ously appointed agent. In such event, the court shall require that the
31 agent account to the guardian. The court shall not, however, invalidate
32 or revoke a will or a codicil of an incapacitated person during the
33 lifetime of such person.

34 § 11. This act shall take effect on the one hundred eightieth day
35 after it shall have become a law, provided that, effective immediately,
36 any rules and regulations necessary to implement the provisions of this
37 act on its effective date are authorized and directed to be completed on
38 or before such date.