STATE OF NEW YORK

3523--A

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

7. the chief executive officer, or the designee of the chief executive officer, of a facility in which the person alleged to be incapacitated is a patient or resident**, except for where the petition is brought primarily for purposes of bill collection or resolving a bill collection dispute**. **Provided, however, where there is no other legally authorized or otherwise available resource, the chief executive officer, or designee of the chief executive officer, of such facility described in this article may file a petition under this article where a guardian is needed to apply for or engage in planning necessary to establish eligibility 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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the social services law for the benefit of the person alleged to be incapacitated.

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

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

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

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

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

15. for all available resources considered by the petitioner, the name, address, telephone number along with any other contact information, relationship to the alleged incapacitated person and any documents known to the petitioner that grant the available resource legal authority to manage the personal, medical and/or financial affairs of the alleged incapacitated person;

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

17. an affirmative statement that the petition is not brought primarily for the purpose of bill collection or resolving a bill collection dispute;

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

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

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

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

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

[~~Unless the court finds that no other person or corporation is available or willing to act as guardian, or to provide needed services for the incapacitated person, the~~] **The** following persons or corporations may not serve as guardian:

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

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

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

(d) If the court determines that the person is incapacitated and appoints a guardian, the court may modify, amend, or revoke any previously executed appointment, power, or delegation under [~~section 5-1501, 5-1505, or 5-1506~~] **title fifteen of article five** of the general obligations law or section two thousand nine hundred sixty-five of the public health law, or section two thousand nine hundred eighty-one of the public health law notwithstanding section two thousand nine hundred ninety-two of the public health law, or any contract, conveyance, or disposition during lifetime or to take effect upon death, made by the incapacitated person prior to the appointment of the guardian if the court finds that the previously executed appointment, power, delegation, contract, conveyance, or disposition during lifetime or to take effect upon death, was made while the person was incapacitated or if the court determines that there has been a breach of fiduciary duty by the previously appointed agent. In such event, the court shall require that the agent account to the guardian. The court shall not, however, invalidate or revoke a will or a codicil of an incapacitated person during the lifetime of such person.

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