

# STATE OF NEW YORK

3772

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

Introduced by M. of A. WEINSTEIN, ZEBROWSKI, SEAWRIGHT, TAYLOR --  
Multi-Sponsored by -- M. of A. GLICK -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the mental hygiene law, in relation to requiring peti-  
tioners 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 Assem-  
bly, 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 nurs-  
es, 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 desig-  
nee of the chief executive officer, of such facility described in this  
article may file a petition under this article where a guardian is need-  
ed 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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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. Effective immediately, any rules and  
36 regulations necessary to implement the provisions of this act on its  
37 effective date are authorized to be made and completed on or before such  
38 effective date.