

# LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

## MEMO IN SUPPORT:

### A.1350/S.4083 - - A Bill to Prevent the Use of Guardianship Law for Primary Purpose of Bill Collecting & to Expand Notice of Guardianship Petitions

**DATE:** March 2017

**TITLE OF BILL:** 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.

**POSITION:** The Long Term Care Community Coalition (LTCCC) supports this legislation, in recognition of the need to ensure that nursing homes and other petitioners have truly exhausted all other options before seeking the appointment of a guardian.

**DISCUSSION:** Article 81 of the Mental Hygiene Law explicitly recognizes that guardianship should be “the last resort for addressing an individual’s needs because it deprives the person of so much power and control over his or her life.”<sup>1</sup> Guardianship imposes very significant limitations on an adult’s liberty that may deprive him or her of the legal right to contract, make medical decisions, and have control over finances, among other things. Therefore, a guardian may be appointed only upon a showing that it is truly necessary to provide for the needs of the individual and that other alternatives and resources are not sufficient.<sup>2</sup> Typically, if an individual has executed a power of attorney and health care proxy, there is no need for a guardian unless the agent has abused her authority. In addition, unless an individual agrees to a guardianship, the petitioner in such a proceeding must make a clear and convincing showing that a person is likely to suffer harm because of an inability to provide for personal needs or property management and that the person cannot adequately understand and appreciate the consequences of this inability.<sup>3</sup> Importantly, the individual’s well-being is the central concern of the statute.

As a 2015 report in *The New York Times* article made clear, certain nursing homes have departed from the statute’s purpose in a dramatic way by bringing Article 81 petitions for the purpose of resolving debt disputes.<sup>4</sup> The article describes one family’s struggle to defend against a guardianship petition that was brought even though the nursing home resident had chosen her husband to make decisions for her through a power of attorney and health care proxy. *The Times’* investigation found that this is not an isolated incident. More than 12 percent of guardianship petitions brought over the last decade in Manhattan were brought by nursing homes, many times as a bill collection tactic.

*The Long Term Care Community Coalition (LTCCC) is a non-profit organization dedicated to improving care, quality of life and dignity for residents in nursing homes and other residential care settings. For more information on LTCCC and our work, visit [www.nursinghome411.org](http://www.nursinghome411.org).*

---

<sup>1</sup> Bailey, Practice Commentary, *McKinney’s Cons Laws of NY*, Book 34A, Mental Hyg. Law § 81.01.

<sup>2</sup> Mental Hyg. Law § 81.02(a)(2).

<sup>3</sup> Mental Hyg. Law § 81.02(b).

<sup>4</sup> See Bernstein, Nina, “To Collect Debts, Nursing Homes Are Seizing Control Over Patients,” *The New York Times* at A1 (January 25, 2015) Available at <http://nyti.ms/1EmgQPc>.