

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

MEMO IN SUPPORT:

BILL TO REFORM POWER OF ATTORNEY LAW

Title of Bill: An Act to amend the general obligations law, in relation to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning; and to repeal certain provisions of such law relating to statutory gift riders.

Bill Numbers: A 5630-A (Weinstein) and S 3923-A (Hoylman)

Position: The Long Term Care Community Coalition (LTCCC) supports this legislation.

The current power of attorney form, because of its complexity and the rigid standard of exact wording, has become a major problem for consumers. It is also often difficult or impossible to get a bank or financial institution to accept a power of attorney since there are no penalties imposed on them for refusing to honor one. Once a consumer loses capacity and cannot execute a new document this can cause a major problem for an agent under a power of attorney who needs to pay rent, make mortgage and utility payments, or do planning for the incapacitated person.

In addition to its complexity, the form is prone to improper execution. It is a multi-part document with an initial power of attorney form and a statutory gifts rider. Each of these has its own signing requirements and different allowable modifications. If defects in preparation or signing are not discovered until after the principal suffers an incapacity there are severe repercussions. In place of these documents, the proposed legislation recommends that New York revert to a simpler form.

For the reasons stated above, LTCCC supports this legislation.