



Date: January 5, 2018

To: Senator Kemp Hannon
Senator John Bonacic

From: Ann Marie Cook, President/CEO of Lifespan of Greater Rochester

Re: Comments for Roundtable:

To explore how to improve New York State's Article 81 Guardianship System

Thank you very much for allowing me to submit comments on ways to improve Article 81 of the Mental Hygiene Law from the non-profit agency perspective.

For background purposes, Lifespan was formed in 1971 and is a nonprofit organization dedicated to providing information, guidance, and services to help older adults take on the challenges and opportunities of longer life. We primarily work in older adults' homes and in the community. Our main office is in Rochester, but our reach, for some services, stretches across the state. Our agency offers over 30 programs and services to older adults and family caregivers. Last year we served over 30,000 people.

We started our Guardianship program in 1996 and have provided services through the years for over 500 older adults who have been deemed incapacitated. We consider serving as guardians for older adults (60+) who are victims of elder abuse or at risk of elder abuse. On average, we serve as guardian for 30 wards at any given time. We limit the caseload size due to funding constraints. (On a separate note, Lifespan also assists in 17-A Guardianships.)

Concerns and possible solutions:

1. While Article 81 provides due process protections to individuals, its one size fits all legal approach is costly, intimidating and impossible for some families to access.
 - a. It is very difficult to get doctors to commit to a court appearance and testify. This requirement slows the process.
 - b. Guardianship practice varies from county to county. The county by county variations exist even though there is one guardianship statute governing the proceedings. More training needs to be done to ensure consistency.

- c. Reporting can be burdensome for some families so they are reluctant to accept the guardianship. One must have some financial sophistication to comply with the law.
- d. The process is too costly for some families which makes the entire proceeding inaccessible. Many families hear the cost of guardianship and rule out this option, even though it may be the best option for both the alleged incapacitated person and the family.
- e. We frequently get calls from nursing homes asking Lifespan to petition the court for guardianship for non-payment. As a rule, we will not do this. As a result, many nursing homes are reluctant to accept a person without advanced directives (or guardianship) in place. Older adults end up remaining in the hospital longer than medically necessary.
- f. There is no clear funding stream. Lifespan typically gets paid from the resources of the incapacitated person. If the person exhausts their resources, we maintain the guardianship for their entire life. This financial burden restricts our ability to accept more cases.

Actual Case: Last week we received a call from Legal Aid Society. An older gentleman needed a guardian to apply for citizenship. An Article 81 Guardianship was required in this case. A full blown hearing, plus subpoenaing doctors, became prohibitively costly and there was no way around this requirement.

2. Suggestions:

- a. Streamline the process for uncontested situations. At times, the older adult is NOT contesting the guardianship but the same process must be followed. In these cases, we would suggest an affidavit from a doctor be accepted as evidence and a streamlined process be implemented.
- b. Similarly, for individuals in which there is clear evidence that the person has advanced dementia and cannot participate in the proceedings, a simpler and more streamlined approach could expedite these cases.
- c. Families need an advocate/ombudsman type of support to assist in complying with the reporting requirements.
- d. Ideally, there would be a dedicated funding stream so that guardians could ensure payment for their services.

Lifespan exists to help older adults live rich and meaningful lives. Article 81 of the Mental Hygiene Law serves as an important law but needs to be modified to meet the needs of both the person who is incapacitated and the guardian. We utilize several contract attorneys to help us operate the program. They would also be happy to provide input if you have any questions. Thank you so much.

Comments Respectfully Submitted by:

**Ann Marie Cook, President/CEO
Lifespan of Greater Rochester
1900 South Clinton Avenue
Rochester, New York 14618
amcook@lifespan-roch.org
(585) 244-8400**