

# HELPING THOSE WHO CAN NO LONGER HELP THEMSELVES

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## A NEEDS ASSESSMENT OF LEGAL SERVICES FOR FAMILIES OF ADULTS WHO ARE INCAPACITATED

This needs assessment focuses on a growing population of mainly elderly and immigrant individuals with diminished or no capacity whose families face legal and financial barriers to aiding them.

### OUR REPORT EXAMINES:

- The extent of the problem in NYC medical facilities
- What programs and services currently exist to assist families
- The need for additional services for patients who lack capacity or who have diminished levels of capacity

*On the reverse page are our recommendations that have stemmed from this needs assessment.*

### WHY NOW?

As our population ages more and more families will have issues concerning the ability to take care of their loved ones. Over the years at LegalHealth, a division of the New York Legal Assistance Group (NYLAG), a pattern has emerged at our hospital legal clinics. A family member of a patient will make an appointment to meet with an onsite attorney. They discuss a number of nonmedical issues that are negatively affecting the health of their family member. The attorneys will ask them if they are authorized under a power of attorney to act as their loved one's agent, and only rarely will they have one. If a family member does not have the appropriate authorization under a power of attorney, there are sometimes options to help with financial and management issues.

However, in many situations, when there is no specific remedy, the primary option families have is petitioning the court for the appointment of a guardian. The appointment of a guardian is a complex, time consuming, and expensive legal process. In order to address this problem, we have conducted this needs assessment and developed these recommendations.

**READ THE FULL REPORT AT: [NYLAG.ORG/HELPINGTHOSEREPORT](https://nylag.org/helpingthosereport)**





## OUR RECOMMENDATIONS:

### **LEGAL SERVICES ATTORNEYS SHOULD RECEIVE ADDITIONAL TRAINING ON NEW YORK'S GUARDIANSHIP PROCESS.**

Our determination of need has revealed a great deal of misunderstanding surrounding guardianship. Legal services attorneys want additional training on petitioning for guardianship in New York, both on the fundamentals of the process, and the details of how a guardian is appointed and when it is necessary. By providing additional training legal services attorneys can, in many cases, avoid guardianship, while providing clients with needed services.

### **LEGAL SERVICES PROVIDERS SHOULD CREATE A GUARDIANSHIP ALTERNATIVE PROGRAM.**

A program should be created that focuses on education and assistance to patients who have diminished, waning, or absent capacity. This program would focus on finding the least restrictive means to serve patients, regardless of their level of capacity. Guardianship should be treated as a last resort, and when guardianship is pursued, it should be done in the most limited way possible.

### **LEGAL SERVICES PROVIDERS SHOULD OFFER ASSISTANCE TO FAMILIES SEEKING TO PETITION FOR GUARDIANSHIP.**

Legal services providers should offer, on a limited basis, assistance to families seeking to petition for guardianship. A comprehensive intake procedure should be employed to ensure that there are no less restrictive alternatives to guardianship. The intake procedure should provide a heightened level of scrutiny for a prospective client, because of the risk they could pose to the patient.

### **ATTORNEYS IN NEW YORK SHOULD PETITION FOR THE GUARDIANSHIP ALTERNATIVE OF COURT RATIFIED TRANSACTIONS WHEN FULL GUARDIANSHIP IS UNNECESSARY.**

If a person does not have capacity, but they only need limited assistance, New York law provides an opportunity for a court to ratify a transaction, a process that is less burdensome than guardianship. However, the current state of guardianship petitioning indicates that such a process is underutilized. Such a process, if more widely adopted, could resolve many barriers to care for people with diminished, waning, or absent capacity, without limiting to their rights or being overly burdensome for their families.

### **IMMIGRATION ATTORNEYS SHOULD SCREEN IMMIGRANT CLIENTS FOR CAPACITY AND RECOMMEND ADVANCE DIRECTIVES WHEN APPROPRIATE.**

In the area of immigration law, patients with conditions that lead to deteriorating capacity, such as Alzheimer's, have difficulty receiving immigration relief because they are unable to consent to immigration applications. If these patients had completed an advance directive before losing capacity they may have been able to avoid these difficulties. Capacity screening should become a regular part of immigration practice, and resources for incapacitated immigrants should be developed. For immigrants at risk for losing capacity, attorneys should recommend advance directives.