



PROJECT GUARDIANSHIP

Changing the way we care for people.

2025 ADVOCACY PRIORITIES

At Project Guardianship, we envision a world where our older neighbors and those with disabilities are celebrated and provided with the support and care they need to thrive and live with pride.

We advocate for systemic change in pursuit of that vision.



A RIGHT TO GUARDIANSHIP

We support access to guardianship for every New Yorker who needs it.

CONTEXT

Article 81 of the New York Mental Hygiene Law states that a judge shall appoint a guardian for an adult unable to manage their personal needs, property, or both, with specific powers of the guardian being tailored to the individual's needs. However, across New York State, judges are unable to fulfill this mandate due to a shortage of guardians.

If a person in need of a guardian does not have a family member or friend to serve as their guardian or the money to pay a private-practicing guardian, a judge may appeal to a local Department of Social Services (LDSS) or nonprofit guardian. In recent years, these options have become unviable, as many LDSSs are unable to fulfill the role of guardian and nonprofits lack the funds to address the growing need for guardianship services at scale.

A recent survey found that guardianship judges in New York are unable to find guardians to serve in up to one third of cases where a guardian is needed. In the five boroughs, that ratio jumps to one half. When a judge cannot find a guardian to appoint, the person in need of a guardian may go without critical care for a period of time.

CALL TO ACTION

An annual \$15 million Executive Budget investment in a Statewide Initiative of Nonprofit Guardians (SING) would:

- Ensure that every New Yorker who needs a legal guardian has access to a high-quality, person-centered guardian regardless of their financial or social circumstance.
- Build the capacity of local aging services organizations across New York to serve as guardians in counties where the shortage is greatest.
- Establish a robust database with demographics and outcomes for guardianship clients.
- Create an estimated net savings of \$80 million per year in Medicaid costs by shortening hospital and nursing home stays and helping New Yorkers live and age in their homes and communities.

A PERSON-CENTERED SYSTEM

We support a guardianship system that guarantees person-centered care.

CONTEXT

Attorneys in New York can apply to join a list of fiduciary appointees pursuant to Part 36 of the Rules of the Chief Judge ("Part 36 list"). Those on the list receive a range of appointments from judges, including guardianship appointments. Part 36 attorneys are often appointed to serve as guardians for individuals who have no family members or friends willing, able, or fit to serve. They are compensated out of the income or assets of the individual for whom they are the guardian, with an annual compensation limit of \$125,000.

In addition, anyone can become a private guardian by completing the training requirements, obtaining certification, and attesting that they have not been found to have violated any civil, criminal, or professional rules.

As it stands, guardians motivated by profit are less likely to ensure the least restrictive arrangement for their clients. Instead, they are incentivized to minimize their own workloads, which often means placing an individual in a facility where food, shelter, medication, and other basic needs are streamlined. Overly restrictive guardianship arrangements can lead to the erosion of a person's mental, physical, emotional, and spiritual wellbeing.

CALL TO ACTION

The New York State Unified Court System should implement the following changes:

- Invest in greater monitoring and oversight of guardians to prevent conflicts of interest and exploitation.
- Develop measures to ensure that guardians pursue the least restrictive arrangements for their clients.
- Verify the status and standing of corporate (nonprofit and for-profit) guardians prior to appointment.

STATUTORY AMENDMENTS

We support improvements to Article 81 of the New York Mental Hygiene Law.

CONTEXT

When a judge appoints an individual or entity to serve as a guardian, it is the responsibility of the petitioner (e.g. the individual or entity that advocated for an individual to be appointed a guardian) to notify the guardian of their appointment. The petitioner is often unaware of this responsibility, which can lead to long stretches of time during which the guardian is unaware of their appointment and the individual in need goes without critical care.

Guardianship powers (i.e., the ability to make decisions about an individual's personal matters, property, or both) are determined through a court order. However, these orders do not always reflect the powers that are necessary for the guardian to take immediate action to care for an individual, in which case the guardian will request an amendment. The amendment process may cause delays that negatively impact a person's health and wellbeing.

In some cases, a person in need of a guardian may be institutionalized in one county while holding permanent residence in another. This can lead to duplicative processes and services.

Finally, language such as "incapacitated person" is antiquated, ageist, and ableist, and causes harm to individuals who interact with the guardianship system and their loved ones.

CALL TO ACTION

Lawmakers should amend Article 81 of the New York Mental Hygiene Law to:

- Compel the appointing court to put guardians on notice, as opposed to relying on petitioners.
- Clarify the district of responsibility to avoid duplicative processes and services.
- Replace antiquated, ageist, and ableist language such as "incapacitated person."

The New York State Unified Court System should:

- Improve the judicial practice of determining guardianship powers to ensure that powers precisely match the needs of the individual observed during the court proceeding, thus preventing the need for early amendments that may delay critical care.

GUARDIANSHIP AS A TOOL OF LAST RESORT

We support investments in the development and promotion of less-restrictive alternatives to guardianship as well as the passage of laws that protect individuals from entering the guardianship system unnecessarily.

CONTEXT

Gaps in our social safety net coupled with inadequate investments in services for older adults have led to an overreliance on Article 81 guardianship. Amid a booming population of older adults, a greater prevalence of Alzheimer's disease and related dementias, and increased cases of mental illness, guardianship has become a tool used to address a multitude of social issues.

Not only is the overuse of legal guardianship a threat to the civil rights of New Yorkers; it is also a breach of Article 81, which requires that all lesser-restrictive options be exhausted prior to pursuing guardianship.

While certain alternatives to guardianship such as powers of attorney, healthcare proxies, advance directives, and living wills exist, they are not known or utilized equally across demographic groups. According to a study of older adults conducted by the National Institutes of Health (NIH), white participants were significantly more likely to possess advance directives (44%) than Black participants (24%) and Hispanic participants (29%).

Without alternative tools in place, individuals are more likely to enter the guardianship system and lose decision-making power.

CALL TO ACTION

New York State legislators should:

- Reintroduce and pass Senate Bill 8133 (2023-2024 legislative session) to prevent institutions such as hospitals and nursing homes from filing guardianship petitions solely for purposes of bill collection, as well as to prevent guardians with potential conflicts of interest from serving.
- Fund a campaign to increase awareness about the option for a judge to appoint a Special Guardian—a guardian with limited powers to manage a specific aspect of a person's affairs, such as a financial transaction or healthcare decision. This campaign should target petitioners and their attorneys as well as the courts.

PAST ACHIEVEMENTS

2022

Project Guardianship formed Guardianship Access New York (GANY), a statewide coalition of nonprofit providers and allies that advocates for adequate public investments in guardianship services and alternatives.

2023

GANY developed a proposal for a \$15 million annual investment in a Statewide Initiative of Nonprofit Guardians (SING). SING would provide guardians for 1,500 New Yorkers in need and save an estimated \$80 million in Medicaid dollars annually.

Secured \$1 million from the legislature for a guardianship helpline and nonprofit guardianship services in Buffalo, Rochester, and Long Island, marking New York's first acknowledgement of responsibility for guardianship services and an endorsement of nonprofit providers.

Launched the Guardianship Prevention and Support Helpline—a first-of-its-kind free resource for New Yorkers with questions about Article 81 guardianship and its alternatives—as well as a guardianship hub on the New York Courts website.

2024

Renewed \$1 million from the legislature for a guardianship helpline and nonprofit guardianship services in Buffalo, Rochester, and Long Island.

Actively participated in ProPublica's coverage of the crisis in our guardianship system and worked closely with various state agencies, including the Unified Court System and Office for the Aging, to advance solutions.

The Unified Court System recognized the need for reform in the guardianship system by investing in two new oversight positions and the expansion of guardianship services statewide.