SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----------X

In the Matter of the Application of

_____, as Administrator of
_____ Nursing Home

Index No. _____

For the Appointment of a Special
Guardian of

VERIFIED PETITION

_____,

An Alleged Incapacitated Person.

----------X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____:

The petition of _____, Administrator of _____ Nursing Home, respectfully shows:

1. Your Petitioner is the Administrator of _____ Nursing Home, [Address], telephone (___)_____, the nursing facility where _____, an alleged incapacitated person, is confined and I am fully acquainted with the facts and circumstances stated herein.

2. This petition is made to the Court for the appointment of a Special Guardian of the property of _____ pursuant to section 81.16 of Mental Hygiene Law to properly dispose of excess assets of the alleged incapacitated person in a sum of approximately $_____ so that _____ can remain eligible for Medicaid benefits for her care and maintenance at _____ Nursing Home, and to establish a personal account for _____ pursuant to Social Services Law in a sum to be fixed by the Court, and to apply such part of the said excess assets to past due NAMI amounts required to be paid by her and the balance thereof, if any, to be paid to the Department of Social Services of the city of _____ on account of its claim for Medicaid benefits previously paid on behalf of the alleged incapacitated person.

3. _____, the person alleged to be incapacitated, is ___ years of age; her date of birth is _____; and, upon information and belief, she has no probable distributees or next of kin. _____ has been residing at the _____ Nursing Home, [Address], telephone (___)_____, since [date]. Previously she had been admitted to XYZ Medical Center on [date] and was thereafter transferred to _____ Nursing Home with an admitting diagnosis of mental status change and gastrointestinal bleeding.

Sample
Sample

_____'s physicians have stated that she requires continued confinement in a nursing facility.

4. According to the statement of _____, M.D., dated _____, _____ has been diagnosed as suffering from organic brain syndrome with hypophonic speech and shallow affect. She has limited intellectual functioning evidenced by confusion, disorientation, poor contact with reality and inability to maintain an ongoing conversation. Annexed hereto and made a part hereof, marked Exhibit A is Dr. _____'s said statement.

5. It is respectfully submitted to the Court that _____ is unable to provide for her property management and cannot adequately understand or appreciate the nature and consequences of such inability. Her functional level requires assistance with all activities of daily living, including toileting, bathing, grooming, meals and socializing. She cannot ambulate and is confined to her wheelchair or bed and requires assistance transferring. She is unable to manage her financial affairs by reason of her mental infirmity.

6. It is respectfully submitted to the Court that by reason of her said physical and mental infirmity, _____ is likely to suffer harm because of her inability to provide for the management of her property and her inability to adequately understand and appreciate the nature and consequences of her said inability. It would be in her best interests that a Special Guardian be appointed for her, and it is respectfully submitted that the said appointment is the least restrictive form of intervention appropriate to _____.

7. The alleged incapacitated person previously had her financial affairs managed by one _____ under a power of attorney granted to him by her. Upon information and belief, _____ was a nephew of the alleged incapacitated person and he died on [date]. Mr. _____ had been managing _____'s affairs since the time she was admitted to _____ Nursing Home and had cooperated with representatives of _____ Nursing Home in interposing an application for Medicaid benefits for _____ during [year], which was ultimately approved on [date] retroactively to [date]. After she ceased her private pay status at _____ Nursing Home, all of the charges that she has incurred since on or about [date], have been paid for by Medicaid with the exception of NAMI amounts payable to the facility pursuant to Social Services Law.

8. After _____ was deemed Medicaid eligible, _____ was billed for NAMI amounts exclusively since he was still receiving her Social Security checks as her representative payee. After _____'s death, _____ Nursing Home was named representative payee to receive the alleged incapacitated person's monthly Social Security benefits; however, there has been no individual who has managed the alleged incapacitated person's affairs, thus resulting in this application to the Court.

9. Representatives of Medicaid's tape match unit recently disclosed to nursing home representatives that apparently _____ is vested with a bank account numbered _____ entitled "_____" at _____ Bank; and, upon information and belief, the said account has a present balance of approximately $_____. The said asset is in excess of $3,000.00, the current exempt amount permitted to be retained by Medicaid recipients for personal funds; and unless the excess sum of $_____ is utilized to dispose

Sample

of _____'s lawful obligations, there is a risk that she will be deemed ineligible for Medicaid. It is respectfully submitted to the Court that she would suffer detriment if a Special Guardian is not appointed to resolve the same so that the expenses of her care at the facility can continue to be paid by Medicaid and so that her residence at the said facility can be continued uninterrupted.

10. Moreover, the alleged incapacitated person is also possessed of a prepaid funeral and burial fund in the present sum of $_____ held by _____, [Address], telephone (___) _____, which apparently was arranged by [financial affairs manager]. Annexed hereto and made a part hereof, marked Exhibit B is a photocopy of the Pre-need Statement of Funeral Services and Merchandise Selected with respect to the said fund. The said account is presently held in the name of [financial affairs manager] for the benefit of _____. It is respectfully submitted to the Court that should the Court grant the relief requested herein, thus continuing the alleged incapacitated person's Medicaid eligibility, _____ Nursing Home on behalf of _____ can be named successor agent of the said account pursuant to Department of Social Services regulations.

11. Your Petitioner respectfully states to the Court that the proposed plan with respect to the relief requested herein is as follows: to continue to maintain _____ at _____ Nursing Home since she has resided here for more than ____ years, the surroundings are familiar to her, and the stability of her said residence would be beneficial to her; the Special Guardian should collect the proceeds of the aforesaid _____ Bank account; establish a personal fund for _____ at _____ Nursing Home in a sum to be determined by the Court; dispose of the lawful obligations of the alleged incapacitated person; communicate with _____ advising it that _____ Nursing Home is the successor agent for the said burial fund; prepare and file a report to the Court with respect to the foregoing, including therein such other information as the Court may direct, pursuant to section 81.16 of Mental Hygiene Law.

12. The approximate value and description of the financial resources of _____ are as follows:

ASSET/INCOME	VALUE
Monthly Social Security Benefits	$ ____.__
_____ Bank Account #_____	____.__
Pre-plan, A Personal Funeral Fund	____.__

13. Upon information and belief, _____ does not own any real property located within the state of New York.

14. To the best of the Petitioner's knowledge, the nature and amount of any claim, debt or obligations of _____ are as follows:

Sample

15. The following powers in respect of the property management needs of _____ are being sought for the Special Guardian to be appointed herein:

a. to collect all assets of _____;

b. to establish a personal fund for her at _____ Nursing Home;

c. to dispose of the lawful liabilities of _____;

d. to communicate with _____ advising it that _____ Nursing Home is the successor agent for the said burial fund; and

e. to exercise such other powers necessary and sufficient to effectuate the proposed plan herein.

16. The relationship of these powers to the functional level and needs of _____ is as follows: Since she is and for some time has been unable to provide for her personal needs or to manage her property, it is respectfully submitted that she will suffer harm to her person and waste will be committed to her estate if her Medicaid eligibility is not retained.

17. These powers are sought for such period as will be required to effectuate the powers requested.

18. The alleged incapacitated person has no known probable distributees; the interested parties hereto are:

19. Your Petitioner respectfully requests that the Court appoint a proper person Special Guardian of _____.

20. The available resources that have been considered by your Petitioner with respect to this application are as follows: conversations and meetings with various physicians who have treated _____ and Dr. _____; correspondence and written communications with attorneys and representatives of _____ Bank; correspondence and telephone communications with the attorney for the estate of [financial affairs manager]; correspondence and telephone communications with representatives of Medicaid. In your Petitioner's opinion, the sufficiency and reliability of these resources is ample and credible since the professionals that have been involved in this matter have identified _____'s incapacity to manage her own affairs.

21. Your Petitioner has retained the services of _____, Esq., to represent _____ Nursing Home in the within proceedings, and your Petitioner respectfully requests that the Court grant an Order fixing a legal fee to be paid to [Name of Attorney] from the proceeds of _____'s estate and further directing the reimbursement to the said attorney of her necessary disbursements advanced herein from the proceeds of the estate.

Sample

22. _____ Nursing Home advanced to [Name of Attorney] the sum of $_____ of its own funds on account of the necessary disbursements to be advanced herein, and Petitioner respectfully requests that the Court grant an Order directing the reimbursement of the said sum to _____ Nursing Home from the proceeds of the alleged incapacitated person's estate.

23. Your petitioner respectfully requests that the Court direct the service of the papers herein be made by certified mail to preserve the limited assets of the alleged incapacitated person's estate.

24. No previous application has been made for the relief requested herein.

WHEREFORE, your Petitioner prays that the Court grant an Order appointing a Special Guardian of _____ with the powers requested herein; fixing a fee to be paid from the proceeds of _____'s estate to _____, Esq., for her legal services rendered herein and directing the reimbursement to her for her necessary disbursements advanced; directing the reimbursement to _____ Nursing Home of the sum of $_____ and granting such other and further relief as to the Court seems just and proper.

Dated: _____, New York
_____ , _____

_____
[Name of Petitioner]

s/_____
[Signing Attorney's Name]

Sworn to before me this ____
day of _____, _____

_____
Notary Public

Sample

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

That I am the Petitioner in the within proceeding; that I have read the foregoing PETITION and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

_____
[Name of Petitioner]

s/_____
[Signing Attorney's Name]

Sworn to before me this
____ day of _____, _____

_____
Notary Public

Sample

Sample