[DATE]

The Hon. Susan M. Collins, Chair

The Hon. Claire McCaskill, Ranking Member

United States Senate

Senate Special Committee on Aging

031 Dirksen Senate Office Building

Washington, D.C. 20510-6050

Dear Senators Collins and McCaskill:

My name is [YOUR NAME], and I am writing to ask that you take action to end a pattern of legal and financial abuse and exploitation of senior citizens. On January 25, the New York Times published a front-page article, “To Collect Debts, Nursing Homes Are Seizing Control Over Patients,” describing an alarming practice where nursing homes seek legal guardianship over their residents solely to collect payment. This terrible misuse of a system designed in part to protect people from financial mistreatment threatens the basic legal and civil rights' of our fellow citizens at a most vulnerable time in their lives.

The New York Times article tells the heartbreaking story of Lillian and Dino Palermo. Like millions of Americans preparing for a future when they may need help taking care of themselves, Lillian gave her husband power of attorney and her health care proxy, to make sure her medical care and finances were handled in a way she approved, by someone she loved. In 2010, Lillian was admitted to a nursing home with dementia, where Dino visits her nearly every day.

Unfortunately for the Palermo family,when Dino disputed nursing home charges that had inexplicably doubled, the nursing home filed a petition for guardianship "asking the court to give a stranger full legal power over Mrs. Palermo, now 90, and complete control over her money." As a result, Dino has been thrust into a personally devastating and financially ruinous cycle of litigation.

Sadly, the Palermo family’s ordeal is not isolated or even rare. The New York Times cites a Hunter College study finding that nursing homes filed over 12 percent of 700 randomly selected guardianship petitions. According to people familiar with guardianship practice, nursing homes “primarily use such petitions as a means of bill collection.” Indeed, the attorney suing the Palermo family on behalf of the nursing home is quoted as saying "guardianship is a legitimate means to get the nursing home paid."

That attorney could not be more wrong. Guardianship is a drastic intervention that gives one person “substantial and often complete authority” over another, frequently extending to intensely personal decisions like whether to receive medical care, where to live, what to do, and who to see. Research has found that guardianship can cause a “significant negative impact on…physical and mental health, longevity, ability to function, and reports of subjective well-being.”

Moreover, when nursing homes seek guardianship instead of using traditional avenues for debt collection, they deprive aging individuals and people with disabilities of important federal protections for debtors, including the opportunity to dispute the validity of a debt.

Over the past three decades, the number of adults under guardianship has tripled. Worse, plenary guardianship—where the guardian is given the power to make all decisions for the person—is ordered in the vast majority of cases. People in such guardianships are no longer permitted to participate in society without mediation through the actions of another, if at all.

As we hope you agree, it is infuriating to hear attorneys and nursing homes describe such a drastic and potentially dehumanizing process as a “legitimate means to get the nursing home paid.” We believe that all people have the right to make choices: to express our own preferences, make our own decisions, and direct our own lives, free from overbroad or undue guardianship. People with disabilities should also be entitled to the same consumer protections as people without disabilities, including the right to an opportunity to dispute debts.

There are nationally recognized, less-restrictive alternatives to guardianship that provide people with the help they need while preserving their personal autonomy, increasing their self-determination, and protecting their legal rights. More and more Americans are using Supported Decision-Making, Powers of Attorney, Advanced Directives, and other methods to prepare for their future. Those who do, like the Palermo family, should be applauded and supported, not subjected to guardianship just to collect a bill.

Guardianship is not and must never be “a legitimate means to get the nursing home paid.” On behalf of millions of older adults and people with disabilities, and millions more who want someone they know and love to be there for them if they need help, we urge you to take action to stop this cynical and ruinous misuse of the guardianship system. Thank you for your attention to this matter.

Sincerely,