

7157

I N S E N A T E

May 1, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to making technical and coordinating amendments and other improvements regarding health care decisions for persons with developmental disabilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1750-b of the surrogate's court procedure act, as
2 added by chapter 500 of the laws of 2002, subdivision 1 as amended by
3 chapter 105 of the laws of 2007, the opening paragraph, paragraphs (a)
4 and (b) of subdivision 1 and the opening paragraph of subdivision 4 as
5 amended by chapter 8 of the laws of 2010, subparagraph (i) of paragraph
6 (a) and clause A of subparagraph (i) of paragraph (e) of subdivision 4
7 as amended by section 18 of part J of chapter 56 of the laws of 2012,
8 and paragraph (d) of subdivision 5 as added by chapter 262 of the laws
9 of 2008, is amended to read as follows:
10 S 1750-b. Health care decisions for [mentally retarded persons] PERSONS
11 WITH DEVELOPMENTAL DISABILITIES
12 1. Scope of authority. AS USED IN THIS SECTION, THE TERMS "DEVELOP-
13 MENTAL DISABILITY" AND "DEVELOPMENTALLY DISABLED" SHALL HAVE THE MEANING
14 SET FORTH IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL
15 HYGIENE LAW. Unless specifically prohibited by the court after consider-
16 ation of the determination, if any, regarding a [mentally retarded
17 person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S capacity to make
18 health care decisions, which is required by section seventeen hundred
19 fifty of this article, the guardian of such person appointed pursuant to
20 section seventeen hundred fifty of this article shall have the authority
21 to make any and all health care decisions, as defined by subdivision six
22 of section twenty-nine hundred eighty of the public health law, on
23 behalf of the [mentally retarded person] PERSON WITH A DEVELOPMENTAL
24 DISABILITY that such person could make if such person had capacity. Such
25 decisions may include decisions to withhold or withdraw life-sustaining
26 treatment. For purposes of this section, "life-sustaining treatment"

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 means medical treatment, including cardiopulmonary resuscitation , INTU-
2 BATION AND/OR MECHANICAL VENTILATION and nutrition and hydration
3 provided by means of medical treatment, which is OR WOULD BE sustaining
4 life functions and without which, according to reasonable medical judg-
5 ment, the patient will die within a relatively short time period.
6 Cardiopulmonary resuscitation is presumed to be life-sustaining treat-
7 ment without the necessity of a medical judgment by an attending physi-
8 cian. The provisions of this article are not intended to permit or
9 promote suicide, assisted suicide or euthanasia; accordingly, nothing in
10 this section shall be construed to permit a guardian to consent to any
11 act or omission to which the [mentally retarded] person WITH A DEVELOP-
12 MENTAL DISABILITY could not consent if such person had capacity.

13 (a) For the purposes of making a decision to withhold or withdraw
14 life-sustaining treatment pursuant to this section, in the case of a
15 person for whom no guardian has been appointed pursuant to section
16 seventeen hundred fifty or seventeen hundred fifty-a of this article, a
17 "guardian" shall also mean a family member of a person who [(i) has
18 mental retardation, or (ii)] has a developmental disability, as defined
19 in section 1.03 of the mental hygiene law, which [(A) includes mental
20 retardation, or (B)] results in [a similar] AN impairment of general
21 intellectual functioning or adaptive behavior so that such person is
22 incapable of managing himself or herself, and/or his or her affairs by
23 reason of such developmental disability. Qualified family members shall
24 be included in a prioritized list of said family members pursuant to
25 regulations established by the commissioner of [mental retardation and]
26 developmental disabilities. Such family members must have a significant
27 and ongoing involvement in a person's life so as to have sufficient
28 knowledge of their needs and, when reasonably known or ascertainable,
29 the person's wishes, including moral and religious beliefs. In the case
30 of a person who was a resident of the former Willowbrook state school on
31 March seventeenth, nineteen hundred seventy-two and those individuals
32 who were in community care status on that date and subsequently returned
33 to Willowbrook or a related facility, who are fully represented by the
34 consumer advisory board and who have no guardians appointed pursuant to
35 this article or have no qualified family members to make such a deci-
36 sion, then a "guardian" shall also mean the Willowbrook consumer advi-
37 sory board. A decision of such family member or the Willowbrook consumer
38 advisory board to withhold or withdraw life-sustaining treatment shall
39 be subject to all of the protections, procedures and safeguards which
40 apply to the decision of a guardian to withhold or withdraw life-sus-
41 taining treatment pursuant to this section.

42 In the case of a person for whom no guardian has been appointed pursu-
43 ant to this article or for whom there is no qualified family member or
44 the Willowbrook consumer advisory board available to make such a deci-
45 sion, a "guardian" shall also mean, notwithstanding the definitions in
46 section 80.03 of the mental hygiene law, a surrogate decision-making
47 committee, as defined in article eighty of the mental hygiene law. All
48 declarations and procedures, including expedited procedures, to comply
49 with this section shall be established by regulations promulgated by the
50 [commission on quality of care and advocacy for persons with disabili-
51 ties] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, AS
52 ESTABLISHED BY ARTICLE TWENTY OF THE EXECUTIVE LAW.

53 (b) Regulations establishing the prioritized list of qualified family
54 members required by paragraph (a) of this subdivision shall be developed
55 by the commissioner of [mental retardation and] developmental disabili-
56 ties in conjunction with parents, advocates and family members of

persons [who are mentally retarded] WITH DEVELOPMENTAL DISABILITIES. Regulations to implement the authority of the Willowbrook consumer advisory board pursuant to paragraph (a) of this subdivision may be promulgated by the commissioner of the office of [mental retardation and] developmental disabilities with advice from the Willowbrook consumer advisory board.

(c) Notwithstanding any provision of law to the contrary, the formal determinations required pursuant to section seventeen hundred fifty of this article shall only apply to guardians appointed pursuant to section seventeen hundred fifty or seventeen hundred fifty-a of this article.

(D) A PATIENT SUBJECT TO THIS SECTION WHO IS FOUND BY THE ATTENDING PHYSICIAN TO HAVE CAPACITY TO MAKE HIS OR HER OWN HEALTH CARE DECISIONS, PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION, UPON NOTICE TO THE CHIEF EXECUTIVE OFFICER OF A RESIDENTIAL FACILITY OPERATED, LICENSED OR AUTHORIZED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, IN WHICH FACILITY THE PATIENT RESIDES OR FROM WHICH HE OR SHE WAS TRANSFERRED, AND THE MENTAL HYGIENE LEGAL SERVICE, MAY MAKE HIS OR HER OWN DECISIONS RELATING TO LIFE-SUSTAINING TREATMENT.

(E) A PATIENT SUBJECT TO THIS SECTION WHO HAS A VALID HEALTH CARE PROXY AT THE TIME OF A HEALTH CARE DECISION, INCLUDING A DECISION INVOLVING LIFE-SUSTAINING TREATMENT, SHALL HAVE SUCH DECISIONS MADE IN ACCORDANCE WITH ARTICLE TWENTY-NINE-C OF THE PUBLIC HEALTH LAW. IF FOR ANY REASON THE AGENT OR AN ALTERNATE AGENT IS NOT REASONABLY AVAILABLE, WILLING AND COMPETENT TO SERVE AND THE PATIENT IS OTHERWISE ELIGIBLE TO HAVE A DECISION AS TO LIFE-SUSTAINING TREATMENT MADE PURSUANT TO THIS SECTION, ANY GUARDIAN OR PERSON OR ENTITY ENTITLED TO EXERCISE THE AUTHORITY OF A GUARDIAN UNDER PARAGRAPH (A) OF THIS SUBDIVISION MAY MAKE SUCH DECISION.

2. Decision-making standard. (a) The guardian shall base all advocacy and health care decision-making solely and exclusively on the best interests of the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY and, when reasonably known or ascertainable with reasonable diligence, on [the mentally retarded] SUCH person's wishes, including moral and religious beliefs.

(b) An assessment of the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S best interests shall include consideration of:

- (i) the dignity and uniqueness of every person;
- (ii) the preservation, improvement or restoration of the [mentally retarded] person's health;
- (iii) the relief of the [mentally retarded] person's suffering by means of palliative care and pain management;
- (iv) the unique nature of [artificially provided] nutrition or hydration PROVIDED BY MEANS OF MEDICAL TREATMENT, and the effect it may have on the [mentally retarded] person; and
- (v) the entire medical condition of the person.

(c) No health care decision shall be influenced in any way by:

- (i) a presumption that persons with [mental retardation] DEVELOPMENTAL DISABILITIES are not entitled to the full and equal rights, equal protection, respect, medical care and dignity afforded to persons without [mental retardation or] developmental disabilities; or

(ii) financial considerations of the guardian, as such considerations affect the guardian, a health care provider or any other party.

3. Right to receive information. Subject to the provisions of sections 33.13 and 33.16 of the mental hygiene law, the guardian shall have the right to receive all medical information and medical and clinical

1 records necessary to make informed decisions regarding the [mentally
2 retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S health care.

3 4. Life-sustaining treatment. The guardian shall have the affirmative
4 obligation to advocate for the full and efficacious provision of health
5 care, including life-sustaining treatment. In the event that a guardian
6 [makes] INITIATES a decision to withdraw or withhold life-sustaining
7 treatment from a [mentally retarded] person WITH A DEVELOPMENTAL DISA-
8 BILITY:

9 (a) The attending physician, as defined in subdivision two of section
10 twenty-nine hundred eighty of the public health law, must confirm to a
11 reasonable degree of medical certainty that the [mentally retarded]
12 person WITH A DEVELOPMENTAL DISABILITY lacks capacity to make health
13 care decisions. The determination thereof shall be included in the
14 [mentally retarded] person's medical record, and shall contain such
15 attending physician's opinion regarding the cause and nature of the
16 [mentally retarded] person's incapacity as well as its extent and proba-
17 ble duration. The attending physician who makes the confirmation shall
18 consult with another physician, or a licensed psychologist, to further
19 confirm the [mentally retarded] person's lack of capacity. The attending
20 physician who makes the confirmation, or the physician or licensed
21 psychologist with whom the attending physician consults, must (i) be
22 employed by a developmental disabilities [services] REGIONAL office
23 named in section 13.17 of the mental hygiene law or employed by the
24 office for people with developmental disabilities to provide treatment
25 and care to people with developmental disabilities, or (ii) have been
26 employed for a minimum of two years to render care and service in a
27 facility or program operated, licensed or authorized by the office [of
28 mental retardation and] FOR PEOPLE WITH developmental disabilities, or
29 (iii) have been approved by the commissioner of [mental retardation and]
30 developmental disabilities in accordance with regulations promulgated by
31 such commissioner. Such regulations shall require that a physician or
32 licensed psychologist possess specialized training or three years expe-
33 rience in treating [mental retardation] PEOPLE WITH DEVELOPMENTAL DISA-
34 BILITIES. A record of such consultation shall be included in the
35 [mentally retarded] person's medical record.

36 (b) The attending physician, as defined in subdivision two of section
37 twenty-nine hundred eighty of the public health law, with the concu-
38 rrence of another physician with whom such attending physician shall
39 consult, must determine to a reasonable degree of medical certainty and
40 note on the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL
41 DISABILITY'S chart that:

42 (i) the [mentally retarded] person has a medical condition as follows:

43 A. a terminal condition, [as defined in subdivision twenty-three of
44 section twenty-nine hundred sixty-one of the public health law] WHICH
45 SHALL MEAN AN ILLNESS OR INJURY FROM WHICH THERE IS NO RECOVERY, AND
46 WHICH CAN REASONABLY BE EXPECTED TO CAUSE DEATH WITHIN ONE YEAR; or

47 B. permanent unconsciousness; or

48 C. a medical condition other than such person's [mental retardation]
49 DEVELOPMENTAL DISABILITY which requires life-sustaining treatment, is
50 irreversible and which will continue indefinitely; and

51 (ii) the life-sustaining treatment would impose an extraordinary
52 burden on such person, in light of:

53 A. such person's medical condition, other than such person's [mental
54 retardation] DEVELOPMENTAL DISABILITY; and

1 B. the expected outcome of the life-sustaining treatment, notwith-
2 standing such person's [mental retardation] DEVELOPMENTAL DISABILITY;
3 and

4 (iii) in the case of a decision to withdraw or withhold artificially
5 provided nutrition or hydration:

6 A. there is no reasonable hope of maintaining life; or

7 B. the artificially provided nutrition or hydration poses an extraor-
8 dinary burden.

9 (c) The guardian shall express a decision to withhold or withdraw
10 life-sustaining treatment either:

11 (i) in writing, dated and signed in the presence of one witness eigh-
12 teen years of age or older who shall sign the decision, and presented to
13 the attending physician, as defined in subdivision two of section twen-
14 ty-nine hundred eighty of the public health law; or

15 (ii) orally, to two persons eighteen years of age or older, at least
16 one of whom is the [mentally retarded person's] PERSON WITH A DEVELOP-
17 MENTAL DISABILITY'S attending physician, as defined in subdivision two
18 of section twenty-nine hundred eighty of the public health law.

19 (d) The attending physician, as defined in subdivision two of section
20 twenty-nine hundred eighty of the public health law, who is provided
21 with the decision of a guardian shall include the decision in the
22 [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S
23 medical chart, and shall either:

24 (i) promptly issue an order to withhold or withdraw life-sustaining
25 treatment from the [mentally retarded] person, and inform the staff
26 responsible for such person's care, if any, of the order; or

27 (ii) promptly object to such decision, in accordance with subdivision
28 five of this section.

29 (e) At least forty-eight hours prior to the implementation of a deci-
30 sion to withdraw life-sustaining treatment, or at the earliest possible
31 time prior to the implementation of a decision to withhold life-sustain-
32 ing treatment, the attending physician shall notify:

33 (i) the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY,
34 except if the attending physician determines, in writing and in consul-
35 tation with another physician or a licensed psychologist, that, to a
36 reasonable degree of medical certainty, the person would suffer immedi-
37 ate and severe injury from such notification. The attending physician
38 who makes the confirmation, or the physician or licensed psychologist
39 with whom the attending physician consults, shall:

40 A. be employed by a developmental disabilities services office named
41 in section 13.17 of the mental hygiene law or employed by the office for
42 people with developmental disabilities to provide treatment and care to
43 people with developmental disabilities, or

44 B. have been employed for a minimum of two years to render care and
45 service in a facility operated, licensed or authorized by the office [of
46 mental retardation and] FOR PEOPLE WITH developmental disabilities, or

47 C. have been approved by the commissioner of [mental retardation and]
48 developmental disabilities in accordance with regulations promulgated by
49 such commissioner. Such regulations shall require that a physician or
50 licensed psychologist possess specialized training or three years expe-
51 rience in treating mental retardation. A record of such consultation
52 shall be included in the [mentally retarded] person's medical record;

53 (ii) if the person is in or was transferred from a residential facili-
54 ty operated, licensed or authorized by the office [of mental retardation
55 and] FOR PEOPLE WITH developmental disabilities, the chief executive
56 officer of the agency or organization operating such facility and the

1 mental hygiene legal service. NOTIFICATION TO THE FACILITY DIRECTOR AND
2 THE MENTAL HYGIENE LEGAL SERVICE SHALL NOT DELAY ISSUANCE OF AN ORDER
3 NOT TO RESUSCITATE; and

4 (iii) if the person is not in and was not transferred from such a
5 facility or program, the commissioner of [mental retardation and] devel-
6 opmental disabilities, or his or her designee.

7 (F) FOR A PATIENT RESIDING IN A FACILITY OPERATED, LICENSED OR AUTHOR-
8 IZED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES AS TO WHOM
9 AN ORDER NOT TO RESUSCITATE HAS BEEN ENTERED, THE ATTENDING PHYSICIAN
10 SHALL REVIEW WHETHER THE ORDER IS STILL APPROPRIATE AT SUCH TIMES AND IN
11 SUCH MANNER AS IS PRESCRIBED BY SUBDIVISION FOUR OF SECTION TWENTY-NINE
12 HUNDRED NINETY-FOUR-DD OF THE PUBLIC HEALTH LAW.

13 5. Objection to health care decision. (a) Suspension. A health care
14 decision made pursuant to subdivision four of this section shall be
15 suspended, pending judicial review, except if the suspension would in
16 reasonable medical judgment be likely to result in the death of the
17 [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, in the event
18 of an objection to that decision at any time by:

19 (i) the [mentally retarded] person on whose behalf such decision was
20 made; or

21 (ii) a parent or adult sibling who either resides with or has main-
22 tained substantial and continuous contact with the [mentally retarded]
23 person; or

24 (iii) the attending physician, as defined in subdivision two of
25 section twenty-nine hundred eighty of the public health law; or

26 (iv) any other health care practitioner providing services to the
27 [mentally retarded] person, who is licensed pursuant to article one
28 hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two,
29 one hundred thirty-three, one hundred thirty-six, one hundred thirty-
30 nine, one hundred forty-one, one hundred forty-three, one hundred
31 forty-four, one hundred fifty-three, one hundred fifty-four, one hundred
32 fifty-six, one hundred fifty-nine or one hundred sixty-four of the
33 education law; or

34 (v) the chief executive officer identified in subparagraph (ii) of
35 paragraph (e) of subdivision four of this section; or

36 (vi) if the person is in or was transferred from a residential facili-
37 ty or program operated, approved or licensed by the office [of mental
38 retardation and] FOR PEOPLE WITH developmental disabilities, the mental
39 hygiene legal service; or

40 (vii) if the person is not in and was not transferred from such a
41 facility or program, the commissioner of [mental retardation and] devel-
42 opmental disabilities, or his or her designee.

43 NOTWITHSTANDING THE FOREGOING, IN CASES WHERE THE ATTENDING PHYSICIAN
44 HAS NOTIFIED THE CHIEF EXECUTIVE OFFICER OF AN AGENCY AND THE MENTAL
45 HYGIENE LEGAL SERVICE OF THE ENTRY OF AN ORDER NOT TO RESUSCITATE PURSU-
46 ANT TO SUBPARAGRAPH (II) OF PARAGRAPH (E) OF SUBDIVISION FOUR OF THIS
47 SECTION, AND IF SUCH NOTICE INCLUDES EITHER THE PHYSICIAN'S STATEMENT OF
48 THE DIAGNOSTIC AND PROGNOSTIC BASIS FOR THE MEDICAL DETERMINATION IN
49 SUPPORT OF THE ORDER OR AN EXCERPT FROM THE PATIENT'S MEDICAL RECORD
50 THAT IS SUFFICIENT TO SUPPORT SUCH DETERMINATION, AN ORDER NOT TO RESUS-
51 CITATE SHALL NOT BE STAYED BY AN OBJECTION BY THE PERSONS DESCRIBED IN
52 SUBPARAGRAPH (V) OR (VI) OF THIS PARAGRAPH UNLESS THE OBJECTION IS
53 ACCOMPANIED BY (A) A WRITTEN STATEMENT BY THE OBJECTING PARTY SETTING
54 FORTH A BASIS FOR ASSERTING THAT A STANDARD IN THIS ARTICLE FOR ENTERING
55 SUCH AN ORDER HAS NOT BEEN MET; AND (B) IF THE BASIS RELATES TO THE
56 FAILURE TO MEET MEDICAL CRITERIA IN THIS ARTICLE FOR THE ISSUANCE OF THE

ORDER, A WRITTEN STATEMENT BY A HEALTH OR SOCIAL SERVICES PRACTITIONER, AS DEFINED IN SUBDIVISION SEVENTEEN OF SECTION TWENTY-NINE HUNDRED NINE-TY-FOUR-A OF THE PUBLIC HEALTH LAW SETTING FORTH THE PROFESSIONAL'S OPINION, BASED ON HIS OR HER REVIEW OF THE AFOREMENTIONED STATEMENT OR MEDICAL RECORD EXCERPT AND CONSULTATION WITH THE PATIENT'S ATTENDING PHYSICIAN, THAT THE MEDICAL CRITERIA IN THIS ARTICLE FOR ENTERING SUCH ORDER HAS NOT BEEN MET.

(b) Form of objection. Such objection shall occur orally or in writing.

(c) Notification. In the event of the suspension of a health care decision pursuant to this subdivision, the objecting party shall promptly notify the guardian and the other parties identified in paragraph (a) of this subdivision, and the attending physician shall record such suspension in the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S medical chart.

(d) Dispute mediation. In the event of an objection pursuant to this subdivision, at the request of the objecting party or person or entity authorized to act as a guardian under this section, except a surrogate decision making committee established pursuant to article eighty of the mental hygiene law, such objection shall be referred to [a dispute mediation system, established pursuant to section two thousand nine hundred seventy-two] AN ETHICS REVIEW COMMITTEE, ESTABLISHED PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-M of the public health law or similar entity for mediating disputes in a hospice, such as a patient's advocate's office[,] OR hospital chaplain's office [or ethics committee], as described in writing and adopted by the governing authority of such hospice, for non-binding mediation. In the event that such dispute cannot be resolved within seventy-two hours or no such mediation entity exists or is reasonably available for mediation of a dispute, the objection [shall] MAY proceed to judicial review pursuant to this subdivision. The party requesting mediation shall provide notification to those parties entitled to notice pursuant to paragraph (a) of this subdivision.

6. Special proceeding authorized. The guardian, the attending physician, as defined in subdivision two of section twenty-nine hundred eighty of the public health law, the chief executive officer identified in subparagraph (ii) of paragraph (e) of subdivision four of this section, the mental hygiene legal service (if the person is in or was transferred from a residential facility or program operated, approved or licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities) or the commissioner of [mental retardation and] developmental disabilities or his or her designee (if the person is not in and was not transferred from such a facility or program) may commence a special proceeding in a court of competent jurisdiction with respect to any dispute arising under this section, including objecting to the withdrawal or withholding of life-sustaining treatment because such withdrawal or withholding is not in accord with the criteria set forth in this section.

7. Provider's obligations. (a) A health care provider shall comply with the health care decisions made by a guardian in good faith pursuant to this section, to the same extent as if such decisions had been made by the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, if such person had capacity.

(b) Notwithstanding paragraph (a) of this subdivision, nothing in this section shall be construed to require a private hospital to honor a guardian's health care decision that the hospital would not honor if the

1 decision had been made by the [mentally retarded] person WITH A DEVELOP-
2 MENTAL DISABILITY, if such person had capacity, because the decision is
3 contrary to a formally adopted written policy of the hospital expressly
4 based on religious beliefs or sincerely held moral convictions central
5 to the hospital's operating principles, and the hospital would be
6 permitted by law to refuse to honor the decision if made by such person,
7 provided:

8 (i) the hospital has informed the guardian of such policy prior to or
9 upon admission, if reasonably possible; and

10 (ii) the [mentally retarded] person is transferred promptly to another
11 hospital that is reasonably accessible under the circumstances and is
12 willing to honor the guardian's decision. If the guardian is unable or
13 unwilling to arrange such a transfer, the hospital's refusal to honor
14 the decision of the guardian shall constitute an objection pursuant to
15 subdivision five of this section.

16 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this
17 section shall be construed to require an individual health care provider
18 to honor a guardian's health care decision that the individual would not
19 honor if the decision had been made by the [mentally retarded] person
20 WITH A DEVELOPMENTAL DISABILITY, if such person had capacity, because
21 the decision is contrary to the individual's religious beliefs or
22 sincerely held moral convictions, provided the individual health care
23 provider promptly informs the guardian and the facility, if any, of his
24 or her refusal to honor the guardian's decision. In such event, the
25 facility shall promptly transfer responsibility for the [mentally
26 retarded] person to another individual health care provider willing to
27 honor the guardian's decision. The individual health care provider shall
28 cooperate in facilitating such transfer of the patient.

29 (d) Notwithstanding the provisions of any other paragraph of this
30 subdivision, if a guardian directs the provision of life-sustaining
31 treatment, the denial of which in reasonable medical judgment would be
32 likely to result in the death of the [mentally retarded] person WITH A
33 DEVELOPMENTAL DISABILITY, a hospital or individual health care provider
34 that does not wish to provide such treatment shall nonetheless comply
35 with the guardian's decision pending either transfer of the [mentally
36 retarded] person to a willing hospital or individual health care provid-
37 er, or judicial review.

38 (e) Nothing in this section shall affect or diminish the authority of
39 a surrogate decision-making panel to render decisions regarding major
40 medical treatment pursuant to article eighty of the mental hygiene law.

41 8. Immunity. (a) Provider immunity. No health care provider or employ-
42 ee thereof shall be subjected to criminal or civil liability, or be
43 deemed to have engaged in unprofessional conduct, for honoring reason-
44 ably and in good faith a health care decision by a guardian, or for
45 other actions taken reasonably and in good faith pursuant to this
46 section.

47 (b) Guardian immunity. No guardian shall be subjected to criminal or
48 civil liability for making a health care decision reasonably and in good
49 faith pursuant to this section.

50 S 2. This act shall take effect on the ninetieth day after it shall
51 have become a law.