S T A T E O F N E W Y O R K

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I N S E N A T E

April 27, 2015

Introduced by Sen. ORTT -- (at request of the Office for People with Developmental Disabilities) -- 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 guardianship and health care decisions of persons with developmental disabilities; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 1750 of the surrogate's court procedure act, as amended by chapter 500 of the laws of 2002, is amended to read as follows:

S 1750. Guardianship of [mentally retarded] persons WITH DEVELOPMENTAL DISABILITIES

1. When it shall appear to the satisfaction of the court that a person is a [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY WITHIN THE MEANING OF SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW AND THAT SUCH PERSON, AS A RESULT OF SUCH DEVELOPMENTAL DISABILITY, EXHIBITS SIGNIFICANT IMPAIRMENT OF GENERAL OR SPECIFIC AREAS OF INTELLECTUAL FUNCTIONING AND/OR ADAPTIVE BEHAVIORS IN SPECIFIED DOMAINS AS ENUMERATED IN SUBDIVISION EIGHT OF SECTION SEVENTEEN HUNDRED FIFTY-TWO OF THIS ARTICLE, the court is authorized to appoint a guardian of the person or of the property or of both if such appointment of a guardian or guardians is in the best interest of the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY. Such appointment shall be made pursuant to the provisions of this article[, provided however that the provisions of section seventeen hundred fifty-a of this article shall not apply to the appointment of a guardian or guardians of a mentally retarded person].

[1. For the purposes of this article, a mentally retarded person is a person who has been certified by one licensed physician and one licensed

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

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psychologist, or by two licensed physicians at least one of whom is familiar with or has professional knowledge in the care and treatment of persons with mental retardation, having qualifications to make such certification, as being incapable to manage him or herself and/or his or her affairs by reason of mental retardation and that such condition is permanent in nature or likely to continue indefinitely.]

2. EVERY GUARDIANSHIP ENTERED INTO PURSUANT TO THIS ARTICLE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, INCLUDING ORDERS AND DECREES PURSUANT TO SECTION SEVENTEEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE, SHALL REMAIN IN FULL FORCE AND EFFECT THEREAFTER, EXCEPT AS AMENDED PURSUANT TO SECTION SEVENTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE OR AS ORDERED BY THE COURT; AND ANY SUCH GUARDIANSHIP SHALL BE ADMINISTERED CONSISTENT WITH THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS SET FORTH IN THIS ARTICLE.

[2.] 3. Every [such certification pursuant to subdivision one of this section,] ORDER AND DECREE made on or after the effective date of this subdivision, shall include a specific determination by [such physician and psychologist, or by such physicians,] THE ISSUING COURT as to whether the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY has the capacity to make health care decisions, as defined by subdivision three of section twenty-nine hundred eighty of the public health law, for himself or herself. A determination that the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY has the capacity to make health care decisions shall not preclude the appointment of a guardian pursuant to this section to make other decisions on behalf of the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY. The absence of this determination in the case of guardians appointed prior to [the effective date of this subdivision] MARCH 16, 2003, shall not preclude such guardians from making health care decisions. FURTHER, GUARDIANS APPOINTED BY ORDERS AND/OR DECREES ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL HAVE AUTHORITY IN ALL AREAS, UNLESS OTHERWISE STATED.

S 2. Section 1750-a of the surrogate's court procedure act is REPEALED.

S 3. Section 1750-b of the surrogate's court procedure act, as added by chapter 500 of the laws of 2002, subdivision 1 as amended by chapter 105 of the laws of 2007, the opening paragraph, paragraphs (a) and (b) of subdivision 1 and the opening paragraph of subdivision 4 as amended by chapter 8 of the laws of 2010, subparagraph (i) of paragraph (a) and clause A of subparagraph (i) of paragraph (e) of subdivision 4 as amended by section 18 of part J of chapter 56 of the laws of 2012, and paragraph (d) of subdivision 5 as added by chapter 262 of the laws of 2008, is amended to read as follows:

S 1750-b. Health care decisions for [mentally retarded] persons WITH DEVELOPMENTAL DISABILITIES

1. Scope of authority. AS USED IN THIS SECTION, THE TERM "DEVELOPMENTAL DISABILITY" IS AS DEFINED BY SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW. Unless specifically prohibited by the court after consideration of [the determination, if any, regarding a mentally retarded person's] A PERSON WITH A DEVELOPMENTAL DISABILITY'S capacity to make health care decisions, which is required by section seventeen hundred fifty of this article, the guardian of such person appointed pursuant to section seventeen hundred fifty of this article shall have the authority to make any and all health care decisions, as defined by subdivision six of section twenty-nine hundred eighty of the public health law, on behalf of the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY that such person could make if such person had

capacity. Such decisions may include decisions to withhold or withdraw life-sustaining treatment. For purposes of this section, "life-sustaining treatment" means medical treatment, including cardiopulmonary resuscitation and nutrition and hydration provided by means of medical treatment, which is sustaining life functions and without which, according to reasonable medical judgment, the patient will die within a relatively short time period. Cardiopulmonary resuscitation is presumed to be life-sustaining treatment without the necessity of a medical judgment by an attending physician. The provisions of this article are not intended to permit or promote suicide, assisted suicide or euthanasia; accordingly, nothing in this section shall be construed to permit a guardian to consent to any act or omission to which the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY could not consent if such person had capacity.

(a) For the purposes of making a decision to withhold or withdraw life-sustaining treatment pursuant to this section, in the case of a person for whom no guardian has been appointed pursuant to section seventeen hundred fifty [or seventeen hundred fifty-a] of this article, a "guardian" shall also mean a family member of a person who [(i) has mental retardation, or (ii)] has a developmental disability, as defined in SUBDIVISION TWENTY-TWO OF section 1.03 of the mental hygiene law, [which (A) includes mental retardation, or (B) results in a similar impairment of general intellectual functioning or adaptive behavior so that such person is incapable of managing himself or herself, and/or his or her affairs by reason of such developmental disability] AND THAT SUCH PERSON, AS A RESULT OF SUCH DEVELOPMENTAL DISABILITY, EXHIBITS SIGNIFICANT IMPAIRMENT OF GENERAL OR SPECIFIC AREAS OF INTELLECTUAL FUNCTIONING AND/OR ADAPTIVE BEHAVIORS IN SPECIFIED DOMAINS AS ENUMERATED IN SUBDIVISION EIGHT OF SECTION SEVENTEEN HUNDRED FIFTY-TWO OF THIS ARTICLE. Qualified family members shall be included in a prioritized list of said family members pursuant to regulations established by the commissioner of [mental retardation and] developmental disabilities. Such family members must have a significant and ongoing involvement in a person's life so as to have sufficient knowledge of their needs and, when reasonably known or ascertainable, the person's wishes, including moral and religious beliefs. In the case of a person who was a resident of the former Willowbrook state school on March seventeenth, nineteen hundred seventy-two and those individuals who were in community care status on that date and subsequently returned to Willowbrook or a related facility, who are fully represented by the consumer advisory board and who have no guardians appointed pursuant to this article or have no qualified family members to make such a decision, then a "guardian" shall also mean the Willowbrook consumer advisory board. A decision of such family member or the Willowbrook consumer advisory board to withhold or withdraw life-sustaining treatment shall be subject to all of the protections, procedures and safeguards which apply to the decision of a guardian to withhold or withdraw life-sustaining treatment pursuant to this section.

In the case of a person for whom no guardian has been appointed pursuant to this article or for whom there is no qualified family member or the Willowbrook consumer advisory board available to make such a decision, a "guardian" shall also mean, notwithstanding the definitions in section 80.03 of the mental hygiene law, a surrogate decision-making committee, as defined in article eighty of the mental hygiene law. All declarations and procedures, including expedited procedures, to comply with this section shall be established by regulations promulgated by the

[commission on quality of care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, AS ESTABLISHED BY ARTICLE TWENTY OF THE EXECUTIVE LAW.

(b) Regulations establishing the prioritized list of qualified family members required by paragraph (a) of this subdivision shall be developed by the commissioner of [mental retardation and] developmental disabilities 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.

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] PERSON WITH A DEVELOPMENTAL DISABILITY'S health;

(iii) the relief of the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'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 WITH A DEVELOPMENTAL DISABILITY; 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 records necessary to make informed decisions regarding the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S health care.

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

(a) The attending physician, as defined in subdivision two of section twenty-nine hundred eighty of the public health law, must confirm to a

reasonable degree of medical certainty that the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY lacks capacity to make health care decisions. The determination thereof shall be included in the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S medical record, and shall contain such attending physician's opinion regarding the cause and nature of the [mentally retarded] person's incapacity as well as its extent and probable duration. The attending physician who makes the confirmation shall consult with another physician, or a [licensed] psychologist, to further confirm the [mentally retarded] person's lack of capacity. The attending physician who makes the confirmation, or the physician or licensed psychologist with whom the attending physician consults, must (i) be employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law or employed by the office for people with developmental disabilities to provide treatment and care to people with developmental disabilities, or

(ii) have been employed for a minimum of two years to render care and service in a facility or program operated, licensed or authorized by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, or

(iii) have been approved by the commissioner of [mental retardation and] developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or licensed psychologist possess specialized training or three years experience in treating [mental retardation] PEOPLE WITH DEVELOPMENTAL DISABILITIES. A record of such consultation shall be included in the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S medical record.

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

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

A. a terminal condition, as defined in subdivision twenty-three of section twenty-nine hundred sixty-one of the public health law; or

B. permanent unconsciousness; or

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

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

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

B. the expected outcome of the life-sustaining treatment, notwithstanding such person's [mental retardation] DEVELOPMENTAL DISABILITY; and

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

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

B. the artificially provided nutrition or hydration poses an extraordinary burden.

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

(i) in writing, dated and signed in the presence of one witness eighteen years of age or older who shall sign the decision, and presented to

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

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

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

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

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

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

(i) the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, except if the attending physician determines, in writing and in consultation with another physician or a licensed psychologist, that, to a reasonable degree of medical certainty, the person would suffer immediate and severe injury from such notification. The attending physician who makes the confirmation, or the physician or licensed psychologist with whom the attending physician consults, shall:

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

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

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

(ii) if the person is in or was transferred from a residential facility operated, licensed or authorized by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, the chief executive officer of the agency or organization operating such facility and the mental hygiene legal service; and

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

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

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

(ii) a parent or adult sibling who either resides with or has maintained substantial and continuous contact with the [mentally retarded] person; or

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

(iv) any other health care practitioner providing services to the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, who is licensed pursuant to article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-three, one hundred fifty-four, one hundred fifty-six, one hundred fifty-nine or one hundred sixty-four of the education law; or

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

(vi) 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, the mental hygiene legal service; or

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

(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 of the public health law or similar entity for mediating disputes in a hospice, such as a patient's advocate's office, 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 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 decision had been made by the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, if such person had capacity, because the decision is contrary to a formally adopted written policy of the hospital expressly based on religious beliefs or sincerely held moral convictions central to the hospital's operating principles, and the hospital would be permitted by law to refuse to honor the decision if made by such person, provided:

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

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

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

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

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

8. Immunity. (a) Provider immunity. No health care provider or employee thereof shall be subjected to criminal or civil liability, or be

deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith a health care decision by a guardian, or for other actions taken reasonably and in good faith pursuant to this section.

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

S 4. Section 1751 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1751. Petition for appointment; by whom made

(A) A petition for the appointment of a guardian [of the person or property, or both,] of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY PURSUANT TO THIS ARTICLE may be made by THE PERSON WITH A DEVELOPMENTAL DISABILITY WHEN SUCH PERSON IS EIGHTEEN YEARS OF AGE OR OLDER, a parent, SPOUSE, SIBLING, ADULT CHILD OR any OTHER interested person eighteen years of age or older on behalf of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY including a corporation authorized to serve as a guardian as provided for by this article[, or by the mentally retarded or developmentally disabled person when such person is eighteen years of age or older].

(B) A PERSON WITH A DEVELOPMENTAL DISABILITY MAY KNOWINGLY AND VOLUNTARILY CONSENT TO THE APPOINTMENT OF A GUARDIAN PURSUANT TO THIS ARTICLE.

S 5. The surrogate's court procedure act is amended by adding a new section 1751-a to read as follows:

S 1751-A. PETITION FOR APPOINTMENT; WHERE MADE (VENUE)

1. A PROCEEDING UNDER THIS ARTICLE SHALL BE BROUGHT IN THE SURROGATE'S COURT WITHIN THE COUNTY IN WHICH THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES, OR IS PHYSICALLY PRESENT AT THE TIME THE PROCEEDING IS COMMENCED. IF THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO BE IN NEED OF A GUARDIAN IS BEING CARED FOR AS A RESIDENT IN A FACILITY, THE RESIDENCE OF THAT PERSON SHALL BE DEEMED TO BE IN THE COUNTY WHERE THE FACILITY IS LOCATED AND THE PROCEEDING SHALL BE BROUGHT IN THAT COUNTY, SUBJECT TO APPLICATION BY AN INTERESTED PARTY FOR A CHANGE IN VENUE TO ANOTHER COUNTY BECAUSE OF THE INCONVENIENCE OF THE PARTIES OR WITNESSES OR THE CONDITION OF THE PERSON ALLEGED TO BE IN NEED OF A GUARDIAN.

2. AFTER THE APPOINTMENT OF A GUARDIAN, ANY PROCEEDING TO MODIFY A PRIOR ORDER SHALL BE BROUGHT IN THE SURROGATE'S COURT WHICH GRANTED THE PRIOR ORDER, UNLESS AT THE TIME OF THE APPLICATION TO MODIFY THE ORDER THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES ELSEWHERE, IN WHICH CASE THE PROCEEDING SHALL BE BROUGHT IN THE COUNTY WHERE THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES, WITHOUT THE NEED FOR A MOTION TO TRANSFER VENUE.

S 6. Section 1752 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1752. Petition for appointment; contents

The petition for the appointment of a guardian shall be filed with the court on forms to be prescribed by the state chief administrator of the courts. Such petition for a guardian of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY shall include, but not be limited to, the following information:

1. the full name, date of birth and residence of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY;

2. the name, age, address and relationship or interest of the petitioner to the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY;

3. the names AND ADDRESSES, IF KNOWN, of the father, the mother, ADULT children, adult siblings [if eighteen years of age or older,] AND the spouse [and primary care physician if other than a physician having submitted a certification with the petition, if any,] of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY and whether or not they are living, and if living, their addresses and the names and addresses of the nearest distributees of full age who are domiciliaries, if both parents are dead;

4. the name and address of the person [with whom the mentally retarded or developmentally disabled] CARING FOR THE person WITH A DEVELOPMENTAL DISABILITY, OR WITH WHOM THE PERSON WITH A DEVELOPMENTAL DISABILITY resides if other than the parents or spouse;

5. THE NAME AND ADDRESS OF ANY PERSON WITH SIGNIFICANT AND ONGOING INVOLVEMENT IN THE LIFE OF THE PERSON WITH A DEVELOPMENTAL DISABILITY SO AS TO HAVE SUFFICIENT KNOWLEDGE OF THEIR NEEDS, IF SUCH PERSONS ARE KNOWN TO THE PETITIONER;

6. the name, age, address, education and other qualifications, and consent of the proposed guardian, standby and alternate guardian, if other than the parent, spouse, adult child if eighteen years of age or older or adult sibling if eighteen years of age or older, and if such parent, spouse or adult child be living, why any of them should not be appointed guardian;

[6.] 7. the estimated value of real and personal property and the annual income therefrom and any other income including governmental entitlements to which the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY is entitled; and

[7. any circumstances which the court should consider in determining whether it is in the best interests of the mentally retarded or developmentally disabled person not be be present at the hearing if conducted.]

8. AN ENUMERATION OF THE SPECIFIC DOMAINS IN WHICH THE PERSON WITH A DEVELOPMENTAL DISABILITY IS ALLEGED TO BE IN NEED OF A GUARDIAN OR A STATEMENT THAT FULL GUARDIANSHIP IS SOUGHT. SPECIFIC DOMAINS MAY BE INCLUDED WHICH MAY INCLUDE:

(I) CONSENT TO OR REFUSAL TO CONSENT TO HEALTH CARE OR OTHER PROFESSIONAL CARE;

(II) MANAGEMENT OF MONEY OR OTHER INCOME, ASSETS OR PROPERTY;

(III) ACCESS TO CONFIDENTIAL AND OTHER SENSITIVE INFORMATION;

(IV) CHOICES INVOLVING EDUCATION, TRAINING, EMPLOYMENT, SUPPORTS AND SERVICES;

(V) REQUESTING ADVOCACY, LEGAL OR OTHER PROFESSIONAL SERVICES;

(VI) CHOICE OF RESIDENCE AND SHARED LIVING ARRANGEMENTS;

(VII) CHOICES AS TO SOCIAL AND RECREATIONAL ACTIVITY;

(VIII) DECISIONS CONCERNING TRAVEL; AND

(IX) APPLICATION FOR GOVERNMENT-SPONSORED OR PRIVATE INSURANCE AND BENEFITS.

9. A STATEMENT OF THE ALTERNATIVES TO GUARDIANSHIP CONSIDERED, INCLUDING BUT NOT LIMITED TO THE EXECUTION OF A HEALTH CARE PROXY, POWER OF ATTORNEY, REPRESENTATIVE PAYEE, SERVICE COORDINATION, AND/OR OTHER SOCIAL SUPPORT SERVICES, OTHER AVAILABLE SUPPORTED OR SHARED DECISION MAKING, AND SURROGATE DECISION-MAKING COMMITTEE, AND REASONS FOR THE DECLINATION OF SUCH ALTERNATIVES.

S 7. Section 1753 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1753. Persons to be served AND NOTICED

1. Upon [presentation] FILING of the petition, process shall issue to[:

(a) the parent or parents, adult children, if the petitioner is other than a parent, adult siblings, if the petitioner is other than a parent, and if the mentally retarded or developmentally disabled person is married, to the spouse, if their residences are known;

(b) the person having care and custody of the mentally retarded or developmentally disabled person, or with whom such person resides if other than the parents or spouse; and

(c) the mentally retarded or developmentally disabled person if fourteen years of age or older for whom an application has been made in such person's behalf.

2. Upon presentation of the petition, notice of such petition shall be served by certified mail to:

(a) the adult siblings if the petitioner is a parent, and adult children if the petitioner is a parent;

(b) the mental hygiene legal service in the judicial department where the facility, as defined in subdivision (a) of section 47.01 of the mental hygiene law, is located if the mentally retarded or developmentally disabled person resides in such a facility;

(c) in all cases, to the director in charge of a facility licensed or operated by an agency of the state of New York, if the mentally retarded or developmentally disabled person resides in such facility;

(d) one other person if designated in writing by the mentally retarded or developmentally disabled person; and

(e) such other persons as the court may deem proper.] THE PERSON WITH A DEVELOPMENTAL DISABILITY, IF PETITIONER IS OTHER THAN THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO BE IN NEED OF A GUARDIAN.

2. UPON FILING OF THE PETITION, NOTICE OF THE PETITION SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE LAST KNOWN ADDRESS OF THE:

(A) PARENTS, SPOUSE, ADULT CHILDREN, AND ADULT SIBLINGS OF THE PERSON ALLEGED TO BE IN NEED OF THE GUARDIAN;

(B) INDIVIDUALS LISTED IN THE PETITION PURSUANT TO SECTION SEVENTEEN HUNDRED FIFTY-TWO OF THIS ARTICLE AND SUBDIVISIONS FOUR AND FIVE OF THIS SECTION;

(C) MENTAL HYGIENE LEGAL SERVICE IN THE JUDICIAL DEPARTMENT WHERE THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES;

(D) THE DIRECTOR IN CHARGE OF A FACILITY LICENSED OR OPERATED BY AN AGENCY OF THE STATE OF NEW YORK, IF THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES IN SUCH FACILITY;

(E) ANY OTHER PERSON IF DESIGNATED IN WRITING BY THE PERSON WITH A DEVELOPMENTAL DISABILITY; AND

(F) SUCH OTHER PERSONS AS THE COURT MAY DEEM PROPER.

3. WITHIN FIVE DAYS OF THE FILING OF THE PETITION, A FULL COPY OF SAID PETITION SHALL BE SERVED BY CERTIFIED MAIL TO THE MENTAL HYGIENE LEGAL SERVICE IN THE JUDICIAL DEPARTMENT IN WHICH THE PETITION WAS FILED. A COPY OF PROOF OF MAILING SHALL BE THEREAFTER FILED WITH THE COURT.

4. FOR PETITIONS TO MODIFY AN EXISTING GUARDIANSHIP PURSUANT TO SECTION SEVENTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE AND/OR TO APPOINT A STANDBY GUARDIAN PURSUANT TO SUBDIVISION SEVENTEEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE, WRITTEN NOTICE MUST BE GIVEN TO ALL STANDBY GUARDIANS CURRENTLY IN SUCCESSION FOR A PERSON WITH A DEVELOPMENTAL DISABILITY WHO IS THE SUBJECT OF THE PETITION.

5. No process or notice shall be necessary to [a parent, adult child, adult sibling, or spouse of the mentally retarded or developmentally disabled person who has been declared by a court as being incompetent. In addition, no process or notice shall be necessary to a spouse who is divorced from the mentally retarded or developmentally disabled person, and to a parent, adult child, adult sibling when it shall appear to the satisfaction of the court that such person or persons have abandoned the mentally retarded or developmentally disabled person] ANY INDIVIDUAL WHO CANNOT, AFTER DUE DILIGENCE, REASONABLY BE LOCATED. THE PETITIONER SHALL SUBMIT AN AFFIDAVIT TO SUCH EFFECT.

S 8. Section 1754 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1754. [Hearing and trial] PROCEEDINGS UPON PETITION

1. Upon a petition for the appointment of a guardian of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY eighteen years of age or older, the court shall [conduct a hearing at which such person shall have the right to jury trial. The right to a jury trial shall be deemed waived by failure to make a demand therefor. The court may in its discretion dispense with a hearing for the appointment of a guardian, and may in its discretion appoint a guardian ad litem, or the mental hygiene legal service if such person is a resident of a mental hygiene facility as defined in subdivision (a) of section 47.01 of the mental hygiene law, to recommend whether the appointment of a guardian as proposed in the application is in the best interest of the mental retarded or developmentally disabled person, provided however, that such application has been made by:

(a) both parents or the survivor; or

(b) one parent and the consent of the other parent; or

(c) any interested party and the consent of each parent.], NOT LATER THAN FORTY-FIVE DAYS FOLLOWING THE FILING OF PROOF OF MAILING UPON THE MENTAL HYGIENE LEGAL SERVICE, SCHEDULE AN APPEARANCE IN THE MATTER.

(A) THE MENTAL HYGIENE LEGAL SERVICE SHALL ASCERTAIN WHETHER THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN HAS ANY OBJECTION TO THE RELIEF SOUGHT IN THE PETITION AND WHETHER THE SERVICE IS ABLE TO REPRESENT THE INTERESTS OF THE PERSON IN THE PROCEEDING.

(B) IF THE SERVICE REPORTS THAT THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN OBJECTS TO THE RELIEF SOUGHT IN THE PETITION, THE COURT SHALL APPOINT THE SERVICE AS COUNSEL FOR THE PERSON. IF THE SERVICE IS NOT AVAILABLE TO SERVE AS THE PERSON'S COUNSEL AND THE PERSON DOES NOT OTHERWISE HAVE COUNSEL, THE COURT SHALL APPOINT COUNSEL FOR THE PERSON FROM AMONG ATTORNEYS ELIGIBLE FOR SUCH APPOINTMENT PURSUANT TO SECTION THIRTY-FIVE OF THE JUDICIARY LAW.

(C) IF THE SERVICE REPORTS THAT THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN DOES NOT OBJECT TO RELIEF SOUGHT IN THE PETITION, THE PERSON'S INTERESTS SHALL CONTINUE TO BE REPRESENTED BY THE SERVICE, IF AVAILABLE, AND THE SERVICE SHALL CONDUCT AN EXAMINATION INTO THE ALLEGATIONS OF FACT CONTAINED IN THE PETITION AND FILE WITH THE COURT AND SERVE NO LATER THAN TEN DAYS PRIOR TO THE APPEARANCE DATE AN ANSWER CONFIRMING OR DENYING THE ALLEGATIONS IN THE PETITION AND REPORT AS TO WHETHER THE SERVICE FINDS GROUNDS TO OBJECT TO THE RELIEF SOUGHT IN THE PETITION. THE SERVICE WILL OTHERWISE PERFORM ITS FUNCTIONS CONSISTENT WITH UNIFORM REGULATIONS PROMULGATED BY THE APPELLATE DIVISION OF THE SUPREME COURT.

(D) IF A PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN WHO DOES NOT OBJECT DOES NOT OTHERWISE APPEAR BY THE SERVICE OR

OTHER COUNSEL, THE COURT SHALL APPOINT A GUARDIAN AD LITEM PURSUANT TO THIS SECTION AND SECTION FOUR HUNDRED THREE OF THIS ACT. ANY GUARDIAN AD LITEM APPOINTED PURSUANT TO THIS SECTION SHALL CONDUCT AN INVESTIGATION INTO THE ALLEGATIONS OF FACT CONTAINED IN THE PETITION AND FILE WITH THE COURT AND SERVE NO LATER THAN TEN DAYS PRIOR TO THE APPEARANCE DATE, A REPORT OF ITS FINDINGS CONFIRMING OR DISCONFIRMING SAID ALLEGATIONS, AND IF APPROPRIATE AND UPON CONSENT OF THE PERSON WITH A DEVELOPMENTAL DISABILITY NOMINATE A PERSON OR ENTITY OF THE RESPONDENT'S CHOOSING TO SERVE AS GUARDIAN, AS WELL AS ANY OTHER MATTER WHICH COULD ASSIST THE COURT'S CONSIDERATION OF THE MATTER, AND SERVE A COPY OF THE REPORT UPON THE PETITIONER.

(E) THE SERVICE, ANY OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN, OR THE GUARDIAN AD LITEM MAY APPLY TO THE COURT FOR PERMISSION TO INSPECT THE CLINICAL RECORDS PERTAINING TO THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THE SERVICE, ANY OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL DISABILITY AND THE GUARDIAN AD LITEM, IF ANY, SHALL BE AFFORDED ACCESS TO THE PERSON'S CLINICAL RECORDS WITHOUT A COURT ORDER TO THE EXTENT THAT SUCH ACCESS IS OTHERWISE AUTHORIZED BY STATE AND FEDERAL LAWS.

(F) THE SERVICE, ANY OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN, AND THE GUARDIAN AD LITEM, IF ANY, MAY REQUEST THE COURT FOR FURTHER EVALUATION OF THE PERSON BY A PHYSICIAN, PSYCHIATRIST OR CERTIFIED PSYCHOLOGIST. IN THE EVENT THAT FURTHER EVALUATIONS ARE REQUIRED, THE COURT MAY GRANT APPROPRIATE ADJOURNMENTS OF THE INITIAL APPEARANCE DATE AND MAY DIRECT, IN THE CASE OF A PERSON DETERMINED TO BE INDIGENT, THAT ANY FURTHER COURT AUTHORIZED EVALUATIONS BE PAID FOR OUT OF FUNDS AVAILABLE PURSUANT TO SECTION THIRTY-FIVE OF THE JUDICIARY LAW.

2. [When it shall appear to the satisfaction of the court that a parent or parents not joining in or consenting to the application have abandoned the mentally retarded or developmentally disabled person or are not otherwise required to receive notice, the court may dispense with such parent's consent in determining the need to conduct a hearing for a person under the age of eighteen. However, if the consent of both parents or the surviving parent is dispensed with by the court, a hearing shall be held on the application.] AT THE FIRST APPEARANCE, THE RESPONDENT SHALL BE PRESENT UNLESS SUCH PRESENCE IS EXCUSED BY THE COURT UPON RECOMMENDATION OF THE SERVICE, RESPONDENT'S COUNSEL, OR THE GUARDIAN AD LITEM IF THE RESPONDENT DOES NOT HAVE COUNSEL. THE PETITIONER SHALL ALSO BE PRESENT AND MAY BE REPRESENTED BY COUNSEL. ANY OTHER PARTY REQUIRED TO BE SERVED OR NOTICED WITH PROCESS IN THE MATTER MAY BE PRESENT.

(A) PRIOR TO SUCH APPEARANCE, THE PETITIONER, EITHER PERSONALLY OR BY COUNSEL, MAY CONFER WITH THE SERVICE, RESPONDENT'S COUNSEL AND THE GUARDIAN AD LITEM IF RESPONDENT DOES NOT HAVE COUNSEL AND AGREE TO AMEND ANY PART OF ITS PETITION AND ALLEGATIONS OF FACT THEREIN. ANY SUCH AMENDED PETITION SHALL BE FILED WITH THE COURT PRIOR TO THE DATE OF THE FIRST APPEARANCE.

(B) AT THE FIRST APPEARANCE, THE COURT SHALL EXAMINE THE ANSWER OF THE SERVICE, RESPONDENT'S COUNSEL, OR THE REPORT OF THE GUARDIAN AD LITEM, IF ANY, AND MAY HEAR FROM THE PETITIONER AND THE SERVICE, RESPONDENT'S COUNSEL AND THE GUARDIAN AD LITEM, IF ANY, ON THE CONTENTS OF THE SAID ANSWER OR REPORT AND ANY AMENDED PETITION FILED.

(C) THE COURT MAY DIRECT THAT AN ORDER AND DECREE OF GUARDIANSHIP ISSUE, INCLUDING THE AUTHORITY OF THE GUARDIAN TO ACT ON BEHALF OF THE

RESPONDENT WITH RESPECT TO ANY MATTER IN WHICH PETITIONER, THE SERVICE, RESPONDENT'S COUNSEL, AND THE GUARDIAN AD LITEM, IF ANY, ALL AGREE ON THE RECORD THAT THE RESPONDENT REQUIRES THE REQUESTED RELIEF AND DOES NOT OBJECT TO SUCH RELIEF.

(D) IN THE EVENT THAT THE PETITION CANNOT BE DISPOSED OF BY THE AGREEMENT OF THE COURT AND ALL OF THE PARTIES, THE COURT SHALL FORTHWITH SCHEDULE A HEARING IN THE MATTER AT WHICH THE RESPONDENT SHALL BE PRESENT UNLESS IT SHALL APPEAR TO THE COURT THAT THE RESPONDENT'S PRESENCE IS MEDICALLY CONTRAINDICATED, IN THAT IT WOULD BE LIKELY TO CAUSE HARM TO THE RESPONDENT, OR UNDER SUCH OTHER CIRCUMSTANCES RAISED BY OR ON BEHALF OF THE RESPONDENT AS THE COURT AGREES THAT THE RESPONDENT'S PRESENCE WOULD NOT BE IN HIS OR HER BEST INTERESTS, PROVIDED HOWEVER THAT THE RESPONDENT'S PRESENCE SHALL NOT BE WAIVED OVER THE OBJECTION OF THE SERVICE, RESPONDENT'S COUNSEL, OR A GUARDIAN AD LITEM, IF ANY, IN WHICH CASE THE COURT SHALL CONDUCT THE HEARING WHERE THE RESPONDENT RESIDES, IF THE COURT IS SATISFIED THAT THE RESPONDENT'S PRESENCE WOULD BE HARMFUL TO THE RESPONDENT.

3. [If a hearing is conducted, the mentally retarded or developmentally disabled person shall be present unless it shall appear to the satisfaction of the court on the certification of the certifying physician that the mentally retarded or developmentally disabled person is medically incapable of being present to the extent that attendance is likely to result in physical harm to such mentally retarded or developmentally disabled person, or under such other circumstances which the court finds would not be in the best interest of the mentally retarded or developmentally disabled person.] IF THERE ARE ANY OBJECTIONS TO THE RELIEF SOUGHT BY THE PETITIONER, THE RESPONDENT HAS A RIGHT TO A HEARING OR JURY TRIAL, IF DEMANDED BY THE RESPONDENT. IN ADDITION, THE COURT MAY CONDUCT A HEARING AT THE REQUEST OF ANY PARTY OR ON ITS OWN MOTION. AT ANY SUCH HEARING OR TRIAL, THE PETITIONER MUST ESTABLISH BY CLEAR AND CONVINCING EVIDENCE ANY FACTS ALLEGED IN THE PETITION OR AMENDED PETITION WHICH ARE CONTROVERTED AND ARE RELEVANT TO WHETHER RESPONDENT HAS A DEVELOPMENTAL DISABILITY, AND IF SO, WHETHER APPOINTMENT OF A GUARDIAN IS REQUIRED AND THE SCOPE OF THE GUARDIAN'S POWERS. ANY OTHER MATTER MUST BE PROVEN BY THE FAIR PREPONDERANCE OF THE EVIDENCE PRESENTED AND ADMITTED.

4. [If either a hearing is dispensed with pursuant to subdivisions one and two of this section or the mentally retarded or developmentally disabled person is not present at the hearing pursuant to subdivision three of this section, the court may appoint a guardian ad litem if no mental hygiene legal service attorney is authorized to act on behalf of the mentally retarded or developmentally disabled person. The guardian ad litem or mental hygiene legal service attorney, if appointed, shall personally interview the mentally retarded or developmentally disabled person and shall submit a written report to the court.

5. If, upon conclusion of such hearing or jury trial or if none be held upon the application, the court is satisfied that the best interests of the mentally retarded or developmentally disabled person will be promoted by the appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians.] IF, UPON CONCLUSION OF SUCH HEARING OR JURY TRIAL, IF ANY, THE COURT IS SATISFIED THAT THE RESPONDENT HAS A DEVELOPMENTAL DISABILITY AND REQUIRES THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR PROPERTY, OR BOTH, IT SHALL MAKE A DECREE NAMING SUCH PERSON OR PERSONS TO SERVE AS SUCH GUARDIANS. THE POWERS OF THE GUARDIAN SHALL BE TAILORED TO THE NEEDS OF THE RESPONDENT.

S 9. The surrogate's court procedure act is amended by adding a new section 1754-a to read as follows:

S 1754-A. DECISION MAKING STANDARD

DECISIONS MADE BY A GUARDIAN ON BEHALF OF A PERSON WITH A DEVELOPMENTAL DISABILITY SHALL BE MADE IN ACCORDANCE WITH THE FOLLOWING STANDARDS.

1. A GUARDIAN SHALL EXERCISE AUTHORITY ONLY AS NECESSITATED BY THE PERSON WITH A DEVELOPMENTAL DISABILITY'S LIMITATIONS, AND, TO THE EXTENT POSSIBLE, SHALL ENCOURAGE THE PERSON WITH A DEVELOPMENTAL DISABILITY TO PARTICIPATE IN DECISIONS AND TO ACT ON HIS OR HER OWN BEHALF.

2. A GUARDIAN SHALL CONSIDER THE EXPRESSED DESIRES AND PERSONAL VALUES OF THE PERSON WITH A DEVELOPMENTAL DISABILITY TO THE EXTENT KNOWN, WHEN MAKING DECISIONS AND SHALL CONSULT WITH THE PERSON WITH A DEVELOPMENTAL DISABILITY WHENEVER MEANINGFUL COMMUNICATION IS POSSIBLE.

3. IF THE PERSON'S WISHES ARE UNKNOWN AND REMAIN UNKNOWN AFTER REASONABLE EFFORTS TO DISCERN THEM, THE DECISION SHALL BE MADE ON THE BASIS OF THE BEST INTERESTS OF THE PERSON WITH A DEVELOPMENTAL DISABILITY AS DETERMINED BY THE GUARDIAN. IN DETERMINING THE BEST INTERESTS OF THE PERSON WITH A DEVELOPMENTAL DISABILITY, THE GUARDIAN SHALL WEIGH THE REASON FOR AND NATURE OF THE PROPOSED ACTION; THE BENEFIT OR NECESSITY OF THE ACTION, THE POSSIBLE RISKS AND OTHER CONSEQUENCES OF THE PROPOSED ACTION; AND ANY AVAILABLE ALTERNATIVES AND THEIR RISKS, CONSEQUENCES AND BENEFITS. THE GUARDIAN SHALL TAKE INTO ACCOUNT ANY OTHER INFORMATION, INCLUDING THE VIEWS OF FAMILY AND FRIENDS, THAT THE GUARDIAN BELIEVES THE PERSON WITH A DEVELOPMENTAL DISABILITY WOULD HAVE CONSIDERED IF ABLE TO ACT FOR HERSELF OR HIMSELF.

S 10. Section 1755 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1755. Modification order

Any [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY eighteen years of age or older, or any person on behalf of any [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom a guardian has been appointed, may apply to the court [having jurisdiction over the guardianship order] PURSUANT TO SECTION 1751-A OF THIS ARTICLE requesting modification of such order in order to protect the [mentally retarded or developmentally disabled person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S financial situation and/or his or her personal interests. The court may, upon receipt of any such request to modify the guardianship order, appoint a guardian ad litem. The court shall so modify the guardianship order if in its judgment the interests of the guardian are adverse to those of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY or if the interests of justice will be best served including, but not limited to, facts showing the necessity for protecting the personal and/or financial interests of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY.

S 11. Section 1756 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1756. Limited [guardian of the property] PURPOSE AND/OR LIMITED DURATION GUARDIANSHIP

1. When it shall appear to the satisfaction of the court that such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom an application for guardianship is made is eighteen years of age or older and is wholly or substantially self-supporting by means of his or her wages or earnings from employment, the court is authorized and empowered to appoint a limited guardian of the

property of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY who shall receive, manage, disburse and account for only such property of said [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY as shall be received from other than the wages or earnings of said person.

The [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom a limited guardian of the property has been appointed shall have the right to receive and expend any and all wages or other earnings of his or her employment and shall have the power to contract or legally bind himself or herself for such sum of money not exceeding one month's wages or earnings from such employment or three hundred dollars, whichever is greater, or as otherwise authorized by the court.

2. WHEN IT SHALL APPEAR TO THE SATISFACTION OF THE COURT, EITHER UPON A PETITION FOR GUARDIANSHIP FILED AS PERMITTED BY SECTIONS 1751 AND 1752 OF THIS ARTICLE OR UPON A PETITION FILED PURSUANT TO THIS SECTION IN A SIMPLIFIED FORMAT TO BE ESTABLISHED BY THE OFFICE OF COURT ADMINISTRATION IN CONSULTATION WITH THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES AND OTHER INTERESTED STAKEHOLDERS, THAT A PERSON WITH A DEVELOPMENTAL DISABILITY NEEDS THE ASSISTANCE OF A GUARDIAN OF THE PERSON AND/OR PROPERTY FOR THE PURPOSE OF MAKING A SINGLE DECISION OR FOR A BRIEF STATED PERIOD OF TRANSITION IN SUCH PERSON'S LIFE, THE COURT MAY APPOINT A LIMITED-PURPOSE GUARDIAN OF THE PERSON AND/OR PROPERTY TO EFFECTUATE SUCH A DECISION OR TRANSITION. IN ANY SUCH CASE, THE PROVISIONS OF SECTION 1754 SHALL APPLY, EXCEPT THAT THE PERIOD FOR THE RENDERING OF A REPORT BY THE MENTAL HYGIENE LEGAL SERVICE OR OTHER RESPONDENT'S COUNSEL MAY BE SHORTENED AS MAY BE REASONABLY NECESSARY TO MEET THE NEEDS OF THE RESPONDENT UNDER THE CIRCUMSTANCES PRESENTED. AN ORDER APPOINTING AND EMPOWERING SUCH A LIMITED-PURPOSE GUARDIAN OF THE PERSON AND/OR PROPERTY SHALL STATE SPECIFICALLY THE DURATION AND SCOPE OF SUCH GUARDIAN'S AUTHORITY.

S 12. Section 1757 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, the section heading as amended by chapter 290 of the laws of 1992, subdivision 2 as amended by chapter 260 of the laws of 2009, subdivision 3 as added by chapter 294 of the laws of 2012, is amended to read as follows:

S 1757. Standby guardian of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY

1. Upon application, a standby guardian of the person or property or both of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY may be appointed by the court. ANY SUCH APPLICATION SHALL BE MADE UPON NOTICE TO THE MENTAL HYGIENE LEGAL SERVICE. The court may also, upon application, appoint an alternate and/or successive alternates to such standby guardian, to act if such standby guardian shall die, or become incapacitated, or shall renounce. Such appointments by the court shall be made in accordance with the provisions of this article.

2. Such standby guardian, or alternate in the event of such standby guardian's death, incapacity or renunciation, shall without further proceedings be empowered to assume the duties of his or her office immediately upon death, renunciation or adjudication of incompetency of the guardian or standby guardian appointed pursuant to this article, subject only to THE FILING OF AN APPLICATION FOR confirmation of his or her appointment by the court within one hundred eighty days following assumption of his or her duties of such office. Before confirming the appointment of the standby guardian or alternate guardian, the court may

conduct a hearing pursuant to section seventeen hundred fifty-four of this article upon petition by anyone on behalf of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY or the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY if such person is eighteen years of age or older, or upon its discretion.

3. Failure of a standby or alternate standby guardian to assume the duties of guardian, seek court confirmation or to renounce the guardianship within sixty days of written notice by certified mail or personal delivery given by or on behalf of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY of a prior guardian's inability to serve and the standby or alternate standby guardian's duty to serve, seek court confirmation or renounce such role shall allow the court to:

(a) deem the failure an implied renunciation of guardianship, and

(b) authorize, notwithstanding the time period provided for in subdivision two of this section to seek court confirmation, any remaining standby or alternate standby guardian to serve in such capacity provided (i) an application for confirmation and appropriate notices pursuant to subdivision one of section seventeen hundred fifty-three of this article are filed, or (ii) an application for modification of the guardianship order pursuant to section seventeen hundred fifty-five of this article is filed.

S 13. Subdivision 2 of section 1758 of the surrogate's court procedure act, as amended by chapter 427 of the laws of 2013, is amended to read as follows:

2. After the appointment of a guardian, standby guardian or alternate guardians, the court shall have and retain general jurisdiction over the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom such guardian shall have been appointed, to take of its own motion or to entertain and adjudicate such steps and proceedings relating to such guardian, standby, or alternate guardianship as may be deemed necessary or proper for the welfare of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY.

S 14. Section 1759 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1759. Duration of guardianship

1. Such guardianship shall not terminate at the age of majority or marriage of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY but shall continue during the life of such person, DURING THE PERIOD SPECIFIED IN A LIMITED PURPOSE OR LIMITED DURATION GUARDIANSHIP, or until terminated by the court.

2. A person eighteen years or older for whom such a guardian has been previously appointed or anyone, including the guardian, on behalf of a [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom a guardian has been appointed may petition the court which made such appointment or the court in his or her county of residence to have the guardian discharged and a successor appointed, or to have the guardian of the property designated as a limited guardian of the property, or to have the guardianship order modified, dissolved or otherwise amended. Upon such a petition for review, the court shall conduct a hearing pursuant to section seventeen hundred fifty-four of this article.

3. Upon marriage of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY for whom such a guardian

has been appointed, the court shall, upon request of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY, spouse, or any other person acting on behalf of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY, review the need, if any, to modify, dissolve or otherwise amend the guardianship order including, but not limited to, the appointment of the spouse as standby guardian. The court, in its discretion, may conduct such review pursuant to section seventeen hundred fifty-four of this article.

S 15. Section 1760 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1760. Corporate guardianship

No corporation may be appointed guardian of the person under the provisions of this article, except that a non-profit corporation organized and existing under the laws of the state of New York and having the corporate power to act as guardian of [mentally retarded or developmentally disabled] persons WITH DEVELOPMENTAL DISABILITIES may be appointed as the guardian of the person only of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY.

S 16. Section 1761 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1761. Application of other provisions

To the extent that the context thereof shall admit, the provisions of article seventeen of this act shall apply to all proceedings under this article with the same force and [affect] EFFECT as if an "infant", as therein referred to, were a "[mentally retarded" or "developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY" as herein defined, and a "guardian" as therein referred to were a "guardian of the [mentally retarded person" or a "guardian of a developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY" as herein provided for.

S 17. The surrogate's court procedure act is amended by adding a new section 1762 to read as follows:

S 1762. ANNUAL REPORT OF PERSONAL NEEDS GUARDIAN

1. FOR THE PURPOSES OF THIS ARTICLE, THE GUARDIAN OF A PERSON WITH A DEVELOPMENTAL DISABILITY SHALL SUBMIT A REPORT REGARDING THE STATUS OF THE PERSON WITH A DEVELOPMENTAL DISABILITY ANNUALLY ON THE ANNIVERSARY OF HIS OR HER APPOINTMENT OR AT SUCH OTHER INTERVAL AS ORDERED BY THE COURT.

2. THE REPORT SHALL BE ON A FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION.

3. A CORPORATE GUARDIAN APPOINTED PURSUANT TO SECTION 1760 OF THIS ARTICLE MAY SUBMIT IN LIEU OF THE FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION IN SUBDIVISION TWO OF THIS SECTION ITS OWN INTERNAL REPORT PROVIDED THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT IS INCLUDED IN THE CORPORATE ANNUAL REPORT.

4. THE GUARDIANSHIP REPORT FORM SHALL BE FILED WITH THE COURT AND MAILED TO STANDBY GUARDIANS AND ALTERNATE STANDBY GUARDIANS, AND, WHERE APPLICABLE, THE DIRECTOR OF MENTAL HYGIENE LEGAL SERVICE IN THE DEPARTMENT IN WHICH THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES AND THE DIRECTOR OF THE RESIDENCE OF THE PERSON WITH A DEVELOPMENTAL DISABILITY OR THE PERSON WITH WHOM THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES.

S 18. This act shall take effect on the one hundred eightieth day after it shall have become a law.