

7132--A

Cal. No. 793

I N S E N A T E

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Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the surrogate's court procedure act, in relation to people with intellectual disabilities

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

1 Section 1. The article heading of article 17-A of the surrogate's
2 court procedure act, as added by chapter 675 of the laws of 1989, is
3 amended to read as follows:

4 GUARDIANS OF [MENTALLY RETARDED]
5 PERSONS WHO ARE INTELLECTUALLY DISABLED AND
6 DEVELOPMENTALLY DISABLED [PERSONS]

7 S 2. Section 1750 of the surrogate's court procedure act, as amended
8 by chapter 500 of the laws of 2002, is amended to read as follows:

9 S 1750. Guardianship of [mentally retarded] persons WHO ARE INTELLECTU-
10 ALLY DISABLED

11 When it shall appear to the satisfaction of the court that a person is
12 a [mentally retarded] person WHO IS INTELLECTUALLY DISABLED, the court
13 is authorized to appoint a guardian of the person or of the property or
14 of both if such appointment of a guardian or guardians is in the best
15 interest of the [mentally retarded] person WHO IS INTELLECTUALLY DISA-
16 BLED. Such appointment shall be made pursuant to the provisions of this
17 article, provided however that the provisions of section seventeen
18 hundred fifty-a of this article shall not apply to the appointment of a
19 guardian or guardians of a [mentally retarded] person WHO IS INTELLECTU-
20 ALLY DISABLED.

21 1. For the purposes of this article, a [mentally retarded] person WHO
22 IS INTELLECTUALLY DISABLED is a person who has been certified by one
23 licensed physician and one licensed psychologist, or by two licensed
24 physicians at least one of whom is familiar with or has professional
25 knowledge in the care and treatment of persons with [mental retardation]

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

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1 AN INTELLECTUAL DISABILITY, having qualifications to make such certifi-
2 cation, as being incapable to manage him or herself and/or his or her
3 affairs by reason of [mental retardation] INTELLECTUAL DISABILITY and
4 that such condition is permanent in nature or likely to continue indefi-
5 nitely.

6 2. Every such certification pursuant to subdivision one of this
7 section, made on or after the effective date of this subdivision, shall
8 include a specific determination by such physician and psychologist, or
9 by such physicians, as to whether the [mentally retarded] person WHO IS
10 INTELLECTUALLY DISABLED has the capacity to make health care decisions,
11 as defined by subdivision three of section twenty-nine hundred eighty of
12 the public health law, for himself or herself. A determination that the
13 [mentally retarded] person WHO IS INTELLECTUALLY DISABLED has the capac-
14 ity to make health care decisions shall not preclude the appointment of
15 a guardian pursuant to this section to make other decisions on behalf of
16 the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED. The
17 absence of this determination in the case of guardians appointed prior
18 to the effective date of this subdivision shall not preclude such guard-
19 ians from making health care decisions.

20 S 3. Section 1750-a of the surrogate's court procedure act, as amended
21 by chapter 744 of the laws of 2005, is amended to read as follows:

22 S 1750-a. Guardianship of PERSONS WHO ARE developmentally disabled
23 [persons]

24 1. When it shall appear to the satisfaction of the court that a person
25 is a PERSON WHO IS developmentally disabled [person], the court is
26 authorized to appoint a guardian of the person or of the property or of
27 both if such appointment of a guardian or guardians is in the best
28 interest of the PERSON WHO IS developmentally disabled [person]. Such
29 appointments shall be made pursuant to the provisions of this article,
30 provided however that the provisions of section seventeen hundred fifty
31 of this article shall not apply to the appointment of a guardian or
32 guardians of a PERSON WHO IS developmentally disabled [person]. For the
33 purposes of this article, a PERSON WHO IS developmentally disabled
34 [person] is a person who has been certified by one licensed physician
35 and one licensed psychologist, or by two licensed physicians at least
36 one of whom is familiar with or has professional knowledge in the care
37 and treatment of persons with developmental disabilities, having quali-
38 fications to make such certification, as having an impaired ability to
39 understand and appreciate the nature and consequences of decisions which
40 result in such person being incapable of managing himself or herself
41 and/or his or her affairs by reason of developmental disability and that
42 such condition is permanent in nature or likely to continue indefinitely,
43 ly, and whose disability:

44 (a) is attributable to cerebral palsy, epilepsy, neurological impair-
45 ment, autism or traumatic head injury;

46 (b) is attributable to any other condition of a person found to be
47 closely related to [mental retardation] INTELLECTUAL DISABILITY because
48 such condition results in similar impairment of general intellectual
49 functioning or adaptive behavior to that of [mentally retarded] persons
50 WITH INTELLECTUAL DISABILITIES; or

51 (c) is attributable to dyslexia resulting from a disability described
52 in subdivision one or two of this section or from [mental retardation]
53 INTELLECTUAL DISABILITY; and

54 (d) originates before such person attains age twenty-two, provided,
55 however, that no such age of origination shall apply for the purposes of
56 this article to a person with traumatic head injury.

1 2. Notwithstanding any provision of law to the contrary, for the
2 purposes of subdivision two of section seventeen hundred fifty and
3 section seventeen hundred fifty-b of this article, "a person [with
4 mental retardation] WHO IS INTELLECTUALLY DISABLED and his or her guard-
5 ian" shall also mean a person and his or her guardian appointed pursuant
6 to this section; provided that such person has been certified by the
7 physicians and/or psychologists, specified in subdivision one of this
8 section, as (i) having [mental retardation] AN INTELLECTUAL DISABILITY,
9 or (ii) having a developmental disability, as defined in section 1.03 of
10 the mental hygiene law, which (A) includes [mental retardation] INTEL-
11 LECTUAL DISABILITY, or (B) results in a similar impairment of general
12 intellectual functioning or adaptive behavior so that such person is
13 incapable of managing himself or herself, and/or his or her affairs by
14 reason of such developmental disability.

15 S 4. Section 1750-b of the surrogate's court procedure act, as added
16 by chapter 500 of the laws of 2002, subdivision 1 as amended by chapter
17 105 of the laws of 2007, the opening paragraph, paragraphs (a) and (b)
18 of subdivision 1, and the opening paragraph of subdivision 4 as amended
19 by chapter 8 of the laws of 2010, subparagraph (i) of paragraph (a) and
20 clause A of subparagraph (i) of paragraph (e) of subdivision 4 as
21 amended by section 18 of part J of chapter 56 of the laws of 2012, and
22 paragraph (d) of subdivision 5 as added by chapter 262 of the laws of
23 2008, is amended to read as follows:

24 S 1750-b. Health care decisions for [mentally retarded] persons WHO ARE
25 INTELLECTUALLY DISABLED

26 1. Scope of authority. Unless specifically prohibited by the court
27 after consideration of the determination, if any, regarding a [mentally
28 retarded person's] PERSON WHO IS INTELLECTUALLY DISABLED'S capacity to
29 make health care decisions, which is required by section seventeen
30 hundred fifty of this article, the guardian of such person appointed
31 pursuant to section seventeen hundred fifty of this article shall have
32 the authority to make any and all health care decisions, as defined by
33 subdivision six of section twenty-nine hundred eighty of the public
34 health law, on behalf of the [mentally retarded] person WHO IS INTELLEC-
35 TUALLY DISABLED that such person could make if such person had capacity.
36 Such decisions may include decisions to withhold or withdraw life-sus-
37 taining treatment. For purposes of this section, "life-sustaining treat-
38 ment" means medical treatment, including cardiopulmonary resuscitation
39 and nutrition and hydration provided by means of medical treatment,
40 which is sustaining life functions and without which, according to
41 reasonable medical judgment, the patient will die within a relatively
42 short time period. Cardiopulmonary resuscitation is presumed to be life-
43 sustaining treatment without the necessity of a medical judgment by an
44 attending physician. The provisions of this article are not intended to
45 permit or promote suicide, assisted suicide or euthanasia; accordingly,
46 nothing in this section shall be construed to permit a guardian to
47 consent to any act or omission to which the [mentally retarded] person
48 WHO IS INTELLECTUALLY DISABLED could not consent if such person had
49 capacity.

50 (a) For the purposes of making a decision to withhold or withdraw
51 life-sustaining treatment pursuant to this section, in the case of a
52 person for whom no guardian has been appointed pursuant to section
53 seventeen hundred fifty or seventeen hundred fifty-a of this article, a
54 "guardian" shall also mean a family member of a person who (i) has
55 [mental retardation] INTELLECTUAL DISABILITY, or (ii) has a develop-
56 mental disability, as defined in section 1.03 of the mental hygiene law,

1 which (A) includes [mental retardation] INTELLECTUAL DISABILITY, or (B)
2 results in a similar impairment of general intellectual functioning or
3 adaptive behavior so that such person is incapable of managing himself
4 or herself, and/or his or her affairs by reason of such developmental
5 disability. Qualified family members shall be included in a prioritized
6 list of said family members pursuant to regulations established by the
7 commissioner of [mental retardation and] THE OFFICE FOR PEOPLE WITH
8 developmental disabilities. Such family members must have a significant
9 and ongoing involvement in a person's life so as to have sufficient
10 knowledge of their needs and, when reasonably known or ascertainable,
11 the person's wishes, including moral and religious beliefs. In the case
12 of a person who was a resident of the former Willowbrook state school on
13 March seventeenth, nineteen hundred seventy-two and those individuals
14 who were in community care status on that date and subsequently returned
15 to Willowbrook or a related facility, who are fully represented by the
16 consumer advisory board and who have no guardians appointed pursuant to
17 this article or have no qualified family members to make such a deci-
18 sion, then a "guardian" shall also mean the Willowbrook consumer advi-
19 sory board. A decision of such family member or the Willowbrook consumer
20 advisory board to withhold or withdraw life-sustaining treatment shall
21 be subject to all of the protections, procedures and safeguards which
22 apply to the decision of a guardian to withhold or withdraw life-sus-
23 taining treatment pursuant to this section.

24 In the case of a person for whom no guardian has been appointed pursu-
25 ant to this article or for whom there is no qualified family member or
26 the Willowbrook consumer advisory board available to make such a deci-
27 sion, a "guardian" shall also mean, notwithstanding the definitions in
28 section 80.03 of the mental hygiene law, a surrogate decision-making
29 committee, as defined in article eighty of the mental hygiene law. All
30 declarations and procedures, including expedited procedures, to comply
31 with this section shall be established by regulations promulgated by the
32 commission on quality of care and advocacy for persons with disabili-
33 ties.

34 (b) Regulations establishing the prioritized list of qualified family
35 members required by paragraph (a) of this subdivision shall be developed
36 by the commissioner of [mental retardation and] THE OFFICE FOR PEOPLE
37 WITH developmental disabilities in conjunction with parents, advocates
38 and family members of persons who are [mentally retarded] INTELLECTUALLY
39 DISABLED. Regulations to implement the authority of the Willowbrook
40 consumer advisory board pursuant to paragraph (a) of this subdivision
41 may be promulgated by the commissioner of the office [of mental retarda-
42 tion and] FOR PEOPLE WITH developmental disabilities with advice from
43 the Willowbrook consumer advisory board.

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

48 2. Decision-making standard. (a) The guardian shall base all advocacy
49 and health care decision-making solely and exclusively on the best
50 interests of the [mentally retarded] person WHO IS INTELLECTUALLY DISA-
51 BLED and, when reasonably known or ascertainable with reasonable dili-
52 gence, on the [mentally retarded person's] PERSON WHO IS INTELLECTUALLY
53 DISABLED'S wishes, including moral and religious beliefs.

54 (b) An assessment of the [mentally retarded person's] PERSON WHO IS
55 INTELLECTUALLY DISABLED'S best interests shall include consideration of:

56 (i) the dignity and uniqueness of every person;

1 (ii) the preservation, improvement or restoration of the [mentally
2 retarded person's] PERSON WHO IS INTELLECTUALLY DISABLED'S health;

3 (iii) the relief of the [mentally retarded person's] PERSON WHO IS
4 INTELLECTUALLY DISABLED'S suffering by means of palliative care and pain
5 management;

6 (iv) the unique nature of artificially provided nutrition or
7 hydration, and the effect it may have on the [mentally retarded] person
8 WHO IS INTELLECTUALLY DISABLED; and

9 (v) the entire medical condition of the person.

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

11 (i) a presumption that persons [with mental retardation] WHO ARE
12 INTELLECTUALLY DISABLED are not entitled to the full and equal rights,
13 equal protection, respect, medical care and dignity afforded to persons
14 without [mental retardation] AN INTELLECTUAL DISABILITY or A develop-
15 mental [disabilities] DISABILITY; or

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

18 3. Right to receive information. Subject to the provisions of sections
19 33.13 and 33.16 of the mental hygiene law, the guardian shall have the
20 right to receive all medical information and medical and clinical
21 records necessary to make informed decisions regarding the [mentally
22 retarded person's] PERSON WHO IS INTELLECTUALLY DISABLED'S health care.

23 4. Life-sustaining treatment. The guardian shall have the affirmative
24 obligation to advocate for the full and efficacious provision of health
25 care, including life-sustaining treatment. In the event that a guardian
26 makes a decision to withdraw or withhold life-sustaining treatment from
27 a [mentally retarded] person WHO IS INTELLECTUALLY DISABLED:

28 (a) The attending physician, as defined in subdivision two of section
29 twenty-nine hundred eighty of the public health law, must confirm to a
30 reasonable degree of medical certainty that the [mentally retarded]
31 person WHO IS INTELLECTUALLY DISABLED lacks capacity to make health care
32 decisions. The determination thereof shall be included in the [mentally
33 retarded person's] PERSON WHO IS INTELLECTUALLY DISABLED'S medical
34 record, and shall contain such attending physician's opinion regarding
35 the cause and nature of the [mentally retarded person's] PERSON WHO IS
36 INTELLECTUALLY DISABLED'S incapacity as well as its extent and probable
37 duration. The attending physician who makes the confirmation shall
38 consult with another physician, or a licensed psychologist, to further
39 confirm the [mentally retarded person's] PERSON WHO IS INTELLECTUALLY
40 DISABLED'S lack of capacity. The attending physician who makes the
41 confirmation, or the physician or licensed psychologist with whom the
42 attending physician consults, must (i) be employed by a developmental
43 disabilities services office named in section 13.17 of the mental
44 hygiene law or employed by the office for people with developmental
45 disabilities to provide treatment and care to people with developmental
46 disabilities, or (ii) have been employed for a minimum of two years to
47 render care and service in a facility or program operated, licensed or
48 authorized by the office [of mental retardation and] FOR PEOPLE WITH
49 developmental disabilities, or (iii) have been approved by the commis-
50 sioner of [mental retardation and] THE OFFICE FOR PEOPLE WITH develop-
51 mental disabilities in accordance with regulations promulgated by such
52 commissioner. Such regulations shall require that a physician or
53 licensed psychologist possess specialized training or three years expe-
54 rience in treating [mental retardation] INTELLECTUAL DISABILITY. A
55 record of such consultation shall be included in the [mentally retarded
56 person's] PERSON WHO IS INTELLECTUALLY DISABLED'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 WHO IS INTELLECTUALLY DISABLED'S chart that:

(i) the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED 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] INTELLECTUAL 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] INTELLECTUAL DISABILITY; and

B. the expected outcome of the life-sustaining treatment, notwithstanding such person's [mental retardation] INTELLECTUAL 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 WHO IS INTELLECTUALLY DISABLED'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 WHO IS INTELLECTUALLY DISABLED'S medical chart, and shall either:

(i) promptly issue an order to withhold or withdraw life-sustaining treatment from the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED, 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 WHO IS INTELLECTUALLY DISABLED, 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

1 who makes the confirmation, or the physician or licensed psychologist
2 with whom the attending physician consults, shall:

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

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

10 C. have been approved by the commissioner of [mental retardation and]
11 THE OFFICE FOR PEOPLE WITH developmental disabilities in accordance with
12 regulations promulgated by such commissioner. Such regulations shall
13 require that a physician or licensed psychologist possess specialized
14 training or three years experience in treating [mental retardation]
15 INTELLECTUAL DISABILITY. A record of such consultation shall be
16 included in the [mentally retarded person's] PERSON WHO IS INTELLECTUAL-
17 LY DISABLED'S medical record;

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

23 (iii) if the person is not in and was not transferred from such a
24 facility or program, the commissioner of [mental retardation and] THE
25 OFFICE FOR PEOPLE WITH developmental disabilities, or his or her desig-
26 nee.

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

33 (i) the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED on
34 whose behalf such decision was made; or

35 (ii) a parent or adult sibling who either resides with or has main-
36 tained substantial and continuous contact with the [mentally retarded]
37 person WHO IS INTELLECTUALLY DISABLED; or

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

40 (iv) any other health care practitioner providing services to the
41 [mentally retarded] person WHO IS INTELLECTUALLY DISABLED, who is
42 licensed pursuant to article one hundred thirty-one, one hundred thir-
43 ty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred
44 thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred
45 forty-three, one hundred forty-four, one hundred fifty-three, one
46 hundred fifty-four, one hundred fifty-six, one hundred fifty-nine or one
47 hundred sixty-four of the education law; or

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

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

54 (vii) if the person is not in and was not transferred from such a
55 facility or program, the commissioner of [mental retardation and] THE

1 OFFICE FOR PEOPLE WITH developmental disabilities, or his or her desig-
2 nee.

3 (b) Form of objection. Such objection shall occur orally or in writ-
4 ing.

5 (c) Notification. In the event of the suspension of a health care
6 decision pursuant to this subdivision, the objecting party shall prompt-
7 ly notify the guardian and the other parties identified in paragraph (a)
8 of this subdivision, and the attending physician shall record such
9 suspension in the [mentally retarded person's] PERSON WHO IS INTELLECTU-
10 ALLY DISABLED'S medical chart.

11 (d) Dispute mediation. In the event of an objection pursuant to this
12 subdivision, at the request of the objecting party or person or entity
13 authorized to act as a guardian under this section, except a surrogate
14 decision making committee established pursuant to article eighty of the
15 mental hygiene law, such objection shall be referred to a dispute medi-
16 ation system, established pursuant to section two thousand nine hundred
17 seventy-two of the public health law or similar entity for mediating
18 disputes in a hospice, such as a patient's advocate's office, hospital
19 chaplain's office or ethics committee, as described in writing and
20 adopted by the governing authority of such hospice, for non-binding
21 mediation. In the event that such dispute cannot be resolved within
22 seventy-two hours or no such mediation entity exists or is reasonably
23 available for mediation of a dispute, the objection shall proceed to
24 judicial review pursuant to this subdivision. The party requesting medi-
25 ation shall provide notification to those parties entitled to notice
26 pursuant to paragraph (a) of this subdivision.

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

42 7. Provider's obligations. (a) A health care provider shall comply
43 with the health care decisions made by a guardian in good faith pursuant
44 to this section, to the same extent as if such decisions had been made
45 by the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED, if
46 such person had capacity.

47 (b) Notwithstanding paragraph (a) of this subdivision, nothing in this
48 section shall be construed to require a private hospital to honor a
49 guardian's health care decision that the hospital would not honor if the
50 decision had been made by the [mentally retarded] person WHO IS INTEL-
51 LECTUALLY DISABLED, if such person had capacity, because the decision is
52 contrary to a formally adopted written policy of the hospital expressly
53 based on religious beliefs or sincerely held moral convictions central
54 to the hospital's operating principles, and the hospital would be
55 permitted by law to refuse to honor the decision if made by such person,
56 provided:

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

3 (ii) the [mentally retarded] person WHO IS INTELLECTUALLY DISABLED is
4 transferred promptly to another hospital that is reasonably accessible
5 under the circumstances and is willing to honor the guardian's decision.
6 If the guardian is unable or unwilling to arrange such a transfer, the
7 hospital's refusal to honor the decision of the guardian shall consti-
8 tute an objection pursuant to subdivision five of this section.

9 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this
10 section shall be construed to require an individual health care provider
11 to honor a guardian's health care decision that the individual would not
12 honor if the decision had been made by the [mentally retarded] person
13 WHO IS INTELLECTUALLY DISABLED, if such person had capacity, because the
14 decision is contrary to the individual's religious beliefs or sincerely
15 held moral convictions, provided the individual health care provider
16 promptly informs the guardian and the facility, if any, of his or her
17 refusal to honor the guardian's decision. In such event, the facility
18 shall promptly transfer responsibility for the [mentally retarded]
19 person WHO IS INTELLECTUALLY DISABLED to another individual health care
20 provider willing to honor the guardian's decision. The individual health
21 care provider shall cooperate in facilitating such transfer of the
22 patient.

23 (d) Notwithstanding the provisions of any other paragraph of this
24 subdivision, if a guardian directs the provision of life-sustaining
25 treatment, the denial of which in reasonable medical judgment would be
26 likely to result in the death of the [mentally retarded] person WHO IS
27 INTELLECTUALLY DISABLED, a hospital or individual health care provider
28 that does not wish to provide such treatment shall nonetheless comply
29 with the guardian's decision pending either transfer of the [mentally
30 retarded] person WHO IS INTELLECTUALLY DISABLED to a willing hospital or
31 individual health care provider, or judicial review.

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

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

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

44 S 5. Section 1751 of the surrogate's court procedure act, as added by
45 chapter 675 of the laws of 1989, is amended to read as follows:

46 S 1751. Petition for appointment; by whom made

47 A petition for the appointment of a guardian of the person or proper-
48 ty, or both, of a [mentally retarded or developmentally disabled] person
49 WHO IS INTELLECTUALLY DISABLED OR A PERSON WHO IS DEVELOPMENTALLY DISA-
50 BLED may be made by a parent, any interested person eighteen years of
51 age or older on behalf of the [mentally retarded or developmentally
52 disabled] person WHO IS INTELLECTUALLY DISABLED OR A PERSON WHO IS
53 DEVELOPMENTALLY DISABLED including a corporation authorized to serve as
54 a guardian as provided for by this article, or by the [mentally retarded
55 or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR A

1 PERSON WHO IS DEVELOPMENTALLY DISABLED when such person is eighteen
2 years of age or older.

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

5 S 1752. Petition for appointment; contents

6 The petition for the appointment of a guardian shall be filed with the
7 court on forms to be prescribed by the state chief administrator of the
8 courts. Such petition for a guardian of a [mentally retarded or develop-
9 mentally disabled] person WHO IS INTELLECTUALLY DISABLED OR A PERSON WHO
10 IS DEVELOPMENTALLY DISABLED shall include, but not be limited to, the
11 following information:

12 1. the full name, date of birth and residence of the [mentally
13 retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISA-
14 BLED OR A PERSON WHO IS DEVELOPMENTALLY DISABLED;

15 2. the name, age, address and relationship or interest of the peti-
16 tioner to the [mentally retarded or developmentally disabled] person WHO
17 IS INTELLECTUALLY DISABLED OR A PERSON WHO IS DEVELOPMENTALLY DISABLED;

18 3. the names of the father, the mother, children, adult siblings if
19 eighteen years of age or older, the spouse and primary care physician if
20 other than a physician having submitted a certification with the peti-
21 tion, if any, of the [mentally retarded or developmentally disabled]
22 person WHO IS INTELLECTUALLY DISABLED OR A PERSON WHO IS DEVELOPMENTALLY
23 DISABLED and whether or not they are living, and if living, their
24 addresses and the names and addresses of the nearest distributees of
25 full age who are domiciliaries, if both parents are dead;

26 4. the name and address of the person with whom the [mentally retarded
27 or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR A
28 PERSON WHO IS DEVELOPMENTALLY DISABLED resides if other than the parents
29 or spouse;

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

36 6. the estimated value of real and personal property and the annual
37 income therefrom and any other income including governmental entitle-
38 ments to which the [mentally retarded or developmentally disabled]
39 person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY
40 DISABLED is entitled; and

41 7. any circumstances which the court should consider in determining
42 whether it is in the best interests of the [mentally retarded or devel-
43 opmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO
44 IS DEVELOPMENTALLY DISABLED TO not be [be] present at the hearing if
45 conducted.

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

48 S 1753. Persons to be served

49 1. Upon presentation of the petition, process shall issue to:

50 (a) the parent or parents, adult children, if the petitioner is other
51 than a parent, adult siblings, if the petitioner is other than a parent,
52 and if the [mentally retarded or developmentally disabled] person WHO IS
53 INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED is
54 married, to the spouse, if their residences are known;

55 (b) the person having care and custody of the [mentally retarded or
56 developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR

PERSON WHO IS DEVELOPMENTALLY DISABLED, or with whom such person resides if other than the parents or spouse; and

(c) the [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED resides in such facility;

(d) one other person if designated in writing by the [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED; and

(e) such other persons as the court may deem proper.

3. 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 IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED, 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED.

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

1. Upon a petition for the appointment of a guardian of a [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED, 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.

1 2. When it shall appear to the satisfaction of the court that a parent
2 or parents not joining in or consenting to the application have aban-
3 doned the [mentally retarded or developmentally disabled] person WHO IS
4 INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED or are
5 not otherwise required to receive notice, the court may dispense with
6 such parent's consent in determining the need to conduct a hearing for a
7 person under the age of eighteen. However, if the consent of both
8 parents or the surviving parent is dispensed with by the court, a hear-
9 ing shall be held on the application.

10 3. If a hearing is conducted, the [mentally retarded or develop-
11 mentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO
12 IS DEVELOPMENTALLY DISABLED shall be present unless it shall appear to
13 the satisfaction of the court on the certification of the certifying
14 physician that the [mentally retarded or developmentally disabled]
15 person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY
16 DISABLED is medically incapable of being present to the extent that
17 attendance is likely to result in physical harm to such [mentally
18 retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISA-
19 BLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED, or under such other
20 circumstances which the court finds would not be in the best interest of
21 the [mentally retarded or developmentally disabled] person WHO IS INTEL-
22 LECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED.

23 4. If either a hearing is dispensed with pursuant to subdivisions one
24 and two of this section or the [mentally retarded or developmentally
25 disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVEL-
26 OPMENTALLY DISABLED is not present at the hearing pursuant to subdivi-
27 sion three of this section, the court may appoint a guardian ad litem if
28 no mental hygiene legal service attorney is authorized to act on behalf
29 of the [mentally retarded or developmentally disabled] person WHO IS
30 INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED. The
31 guardian ad litem or mental hygiene legal service attorney, if
32 appointed, shall personally interview the [mentally retarded or develop-
33 mentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO
34 IS DEVELOPMENTALLY DISABLED and shall submit a written report to the
35 court.

36 5. If, upon conclusion of such hearing or jury trial or if none be
37 held upon the application, the court is satisfied that the best inter-
38 ests of the [mentally retarded or developmentally disabled] person WHO
39 IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED
40 will be promoted by the appointment of a guardian of the person or prop-
41 erty, or both, it shall make a decree naming such person or persons to
42 serve as such guardians.

43 S 9. Section 1755 of the surrogate's court procedure act, as added by
44 chapter 675 of the laws of 1989, is amended to read as follows:
45 S 1755. Modification order

46 Any [mentally retarded or developmentally disabled] person WHO IS
47 INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED eigh-
48 teen years of age or older, or any person on behalf of any [mentally
49 retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISA-
50 BLED OR PERSON WHO IS DEVELOPMENTAL DISABLED for whom a guardian has
51 been appointed, may apply to the court having jurisdiction over the
52 guardianship order requesting modification of such order in order to
53 protect the [mentally retarded or developmentally disabled person's]
54 PERSON WHO IS INTELLECTUALLY DISABLED'S, OR PERSON WHO IS DEVELOP-
55 MENTALLY DISABLED'S financial situation and/or his or her personal
56 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED.

S 10. 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

When it shall appear to the satisfaction of the court that such [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED who shall receive, manage, disburse and account for only such property of said [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED as shall be received from other than the wages or earnings of said person.

The [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED 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.

S 11. 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, and 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 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED

1. Upon application, a standby guardian of the person or property or both of a [mentally retarded or developmentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED may be appointed by the court. 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 confirmation of his or her appointment by the court within one hundred eighty days following assumption of his or her duties of such

1 office. Before confirming the appointment of the standby guardian or
2 alternate guardian, the court may conduct a hearing pursuant to section
3 seventeen hundred fifty-four of this article upon petition by anyone on
4 behalf of the [mentally retarded or developmentally disabled] person WHO
5 IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED or
6 the [mentally retarded or developmentally disabled] person WHO IS INTEL-
7 LECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED if such
8 person is eighteen years of age or older, or upon its discretion.

9 3. Failure of a standby or alternate standby guardian to assume the
10 duties of guardian, seek court confirmation or to renounce the guardian-
11 ship within sixty days of written notice by certified mail or personal
12 delivery given by or on behalf of the [mentally retarded or develop-
13 mentally disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO
14 IS DEVELOPMENTALLY DISABLED of a prior guardian's inability to serve and
15 the standby or alternate standby guardian's duty to serve, seek court
16 confirmation or renounce such role shall allow the court to:

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

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

26 S 12. Section 1758 of the surrogate's court procedure act, as amended
27 by chapter 427 of the laws of 2013, is amended to read as follows:

28 S 1758. Court jurisdiction

29 1. The jurisdiction of the court to hear proceedings pursuant to this
30 article shall be subject to article eighty-three of the mental hygiene
31 law.

32 2. After the appointment of a guardian, standby guardian or alternate
33 guardians, the court shall have and retain general jurisdiction over the
34 [mentally retarded or developmentally disabled] person WHO IS INTELLEC-
35 TUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED for whom such
36 guardian shall have been appointed, to take of its own motion or to
37 entertain and adjudicate such steps and proceedings relating to such
38 guardian, standby, or alternate guardianship as may be deemed necessary
39 or proper for the welfare of such [mentally retarded or developmentally
40 disabled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVEL-
41 OPMENTALLY DISABLED.

42 S 13. Section 1759 of the surrogate's court procedure act, as added by
43 chapter 675 of the laws of 1989, is amended to read as follows:

44 S 1759. Duration of guardianship

45 1. Such guardianship shall not terminate at the age of majority or
46 marriage of such [mentally retarded or developmentally disabled] person
47 WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED
48 but shall continue during the life of such person, or until terminated
49 by the court.

50 2. A person eighteen years or older for whom such a guardian has been
51 previously appointed or anyone, including the guardian, on behalf of a
52 [mentally retarded or developmentally disabled] person WHO IS INTELLEC-
53 TUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED for whom a
54 guardian has been appointed may petition the court which made such
55 appointment or the court in his or her county of residence to have the
56 guardian discharged and a successor appointed, or to have the guardian

1 of the property designated as a limited guardian of the property, or to
2 have the guardianship order modified, dissolved or otherwise amended.
3 Upon such a petition for review, the court shall conduct a hearing
4 pursuant to section seventeen hundred fifty-four of this article.

5 3. Upon marriage of such [mentally retarded or developmentally disa-
6 bled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOP-
7 MENTALLY DISABLED for whom such a guardian has been appointed, the court
8 shall, upon request of the [mentally retarded or developmentally disa-
9 bled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOP-
10 MENTALLY DISABLED, spouse, or any other person acting on behalf of the
11 [mentally retarded or developmentally disabled] person WHO IS INTELLEC-
12 TUALLY DISABLED OR PERSON WHO IS DEVELOPMENTALLY DISABLED, review the
13 need, if any, to modify, dissolve or otherwise amend the guardianship
14 order including, but not limited to, the appointment of the spouse as
15 standby guardian. The court, in its discretion, may conduct such review
16 pursuant to section seventeen hundred fifty-four of this article.

17 S 14. Section 1760 of the surrogate's court procedure act, as added by
18 chapter 675 of the laws of 1989, is amended to read as follows:

19 S 1760. Corporate guardianship

20 No corporation may be appointed guardian of the person under the
21 provisions of this article, except that a non-profit corporation organ-
22 ized and existing under the laws of the state of New York and having the
23 corporate power to act as guardian of [mentally retarded or develop-
24 mentally disabled persons] A PERSON WHO IS INTELLECTUALLY DISABLED OR
25 PERSON WHO IS DEVELOPMENTALLY DISABLED may be appointed as the guardian
26 of the person only of such [mentally retarded or developmentally disa-
27 bled] person WHO IS INTELLECTUALLY DISABLED OR PERSON WHO IS DEVELOP-
28 MENTALLY DISABLED.

29 S 15. Section 1761 of the surrogate's court procedure act, as added by
30 chapter 675 of the laws of 1989, is amended to read as follows:

31 S 1761. Application of other provisions

32 To the extent that the context thereof shall admit, the provisions of
33 article seventeen of this act shall apply to all proceedings under this
34 article with the same force and [affect] EFFECT as if an "infant", as
35 therein referred to, were a ["mentally retarded" or "developmentally
36 disabled person"] "PERSON WHO IS INTELLECTUALLY DISABLED" OR "PERSON WHO
37 IS DEVELOPMENTALLY DISABLED" as herein defined, and a "guardian" as
38 therein referred to were a "guardian of the [mentally retarded] person
39 WHO IS INTELLECTUALLY DISABLED" or a "guardian of a [developmentally
40 disabled] person WHO IS DEVELOPMENTALLY DISABLED" as herein provided
41 for.

42 S 16. This act shall take effect immediately.