

7132

I N S E N A T E

March 30, 2016

Introduced by Sen. ORTT -- 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 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 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] INTELLECTUALLY DISABLED
10 persons

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

20 1. For the purposes of this article, [a mentally retarded] AN INTEL-
21 LECTUALLY DISABLED person is a person who has been certified by one
22 licensed physician and one licensed psychologist, or by two licensed
23 physicians at least one of whom is familiar with or has professional
24 knowledge in the care and treatment of persons with [mental retardation]
25 INTELLECTUAL DISABILITIES, having qualifications to make such certifi-
26 cation, as being incapable to manage him or herself and/or his or her
27 affairs by reason of [mental retardation] AN INTELLECTUAL DISABILITY and

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

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1 that such condition is permanent in nature or likely to continue indefi-
2 nitely.

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

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

19 S 1750-a. Guardianship of developmentally disabled persons

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

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

41 (b) is attributable to any other condition of a person found to be
42 closely related to [mental retardation] AN INTELLECTUAL DISABILITY
43 because such condition results in similar impairment of general intel-
44 lectual functioning or adaptive behavior to that of [mentally retarded]
45 INTELLECTUALLY DISABLED persons; or

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

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

52 2. Notwithstanding any provision of law to the contrary, for the
53 purposes of subdivision two of section seventeen hundred fifty and
54 section seventeen hundred fifty-b of this article, "a person with
55 [mental retardation] AN INTELLECTUAL DISABILITY and his or her guardian"
56 shall also mean a person and his or her guardian appointed pursuant to

1 this section; provided that such person has been certified by the physi-
2 cians and/or psychologists, specified in subdivision one of this
3 section, as (i) having [mental retardation] AN INTELLECTUAL DISABILITY,
4 or (ii) having a developmental disability, as defined in section 1.03 of
5 the mental hygiene law, which (A) includes [mental retardation] INTEL-
6 LECTUAL DISABILITIES, or (B) results in a similar impairment of general
7 intellectual functioning or adaptive behavior so that such person is
8 incapable of managing himself or herself, and/or his or her affairs by
9 reason of such developmental disability.

10 S 4. Section 1750-b of the surrogate's court procedure act, as added
11 by chapter 500 of the laws of 2002, subdivision 1 as amended by chapter
12 105 of the laws of 2007, the opening paragraph, paragraphs (a) and (b)
13 of subdivision 1, and the opening paragraph of subdivision 4 as amended
14 by chapter 8 of the laws of 2010, subparagraph (i) of paragraph (a) and
15 clause A of subparagraph (i) of paragraph (e) of subdivision 4 as
16 amended by section 18 of part J of chapter 56 of the laws of 2012, and
17 paragraph (d) of subdivision 5 as added by chapter 262 of the laws of
18 2008, is amended to read as follows:

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

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

44 (a) For the purposes of making a decision to withhold or withdraw
45 life-sustaining treatment pursuant to this section, in the case of a
46 person for whom no guardian has been appointed pursuant to section
47 seventeen hundred fifty or seventeen hundred fifty-a of this article, a
48 "guardian" shall also mean a family member of a person who (i) has
49 [mental retardation] AN INTELLECTUAL DISABILITY, or (ii) has a develop-
50 mental disability, as defined in section 1.03 of the mental hygiene law,
51 which (A) includes [mental retardation] AN INTELLECTUAL DISABILITY, or
52 (B) results in a similar impairment of general intellectual functioning
53 or adaptive behavior so that such person is incapable of managing
54 himself or herself, and/or his or her affairs by reason of such develop-
55 mental disability. Qualified family members shall be included in a
56 prioritized list of said family members pursuant to regulations estab-

lished by the commissioner [of mental retardation and] FOR PEOPLE WITH 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.

(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] FOR PEOPLE WITH developmental disabilities in conjunction with parents, advocates and family members of persons who are [mentally retarded] INTELLECTUALLY DISABLED. 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] FOR PEOPLE WITH 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] INTELLECTUALLY DISABLED person and, when reasonably known or ascertainable with reasonable diligence, on the [mentally retarded] INTELLECTUALLY DISABLED person's wishes, including moral and religious beliefs.

(b) An assessment of the [mentally retarded] INTELLECTUALLY DISABLED person'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] INTELLECTUALLY DISABLED person's health;
- (iii) the relief of the [mentally retarded] INTELLECTUALLY DISABLED person's suffering by means of palliative care and pain management;

1 (iv) the unique nature of artificially provided nutrition or
2 hydration, and the effect it may have on the [mentally retarded] INTEL-
3 LECTUALLY DISABLED person; and
4 (v) the entire medical condition of the person.
5 (c) No health care decision shall be influenced in any way by:
6 (i) a presumption that persons with [mental retardation] AN INTELLEC-
7 TUAL DISABILITY are not entitled to the full and equal rights, equal
8 protection, respect, medical care and dignity afforded to persons with-
9 out [mental retardation] INTELLECTUAL DISABILITIES or developmental
10 disabilities; or
11 (ii) financial considerations of the guardian, as such considerations
12 affect the guardian, a health care provider or any other party.
13 3. Right to receive information. Subject to the provisions of sections
14 33.13 and 33.16 of the mental hygiene law, the guardian shall have the
15 right to receive all medical information and medical and clinical
16 records necessary to make informed decisions regarding the [mentally
17 retarded] INTELLECTUALLY DISABLED person's health care.
18 4. Life-sustaining treatment. The guardian shall have the affirmative
19 obligation to advocate for the full and efficacious provision of health
20 care, including life-sustaining treatment. In the event that a guardian
21 makes a decision to withdraw or withhold life-sustaining treatment from
22 a [mentally retarded] INTELLECTUALLY DISABLED person:
23 (a) The attending physician, as defined in subdivision two of section
24 twenty-nine hundred eighty of the public health law, must confirm to a
25 reasonable degree of medical certainty that the [mentally retarded]
26 INTELLECTUALLY DISABLED person lacks capacity to make health care deci-
27 sions. The determination thereof shall be included in the [mentally
28 retarded] INTELLECTUALLY DISABLED person's medical record, and shall
29 contain such attending physician's opinion regarding the cause and
30 nature of the [mentally retarded] INTELLECTUALLY DISABLED person's inca-
31 pacity as well as its extent and probable duration. The attending physi-
32 cian who makes the confirmation shall consult with another physician, or
33 a licensed psychologist, to further confirm the [mentally retarded]
34 INTELLECTUALLY DISABLED person's lack of capacity. The attending physi-
35 cian who makes the confirmation, or the physician or licensed psychol-
36 ogist with whom the attending physician consults, must (i) be employed
37 by a developmental disabilities services office named in section 13.17
38 of the mental hygiene law or employed by the office for people with
39 developmental disabilities to provide treatment and care to people with
40 developmental disabilities, or (ii) have been employed for a minimum of
41 two years to render care and service in a facility or program operated,
42 licensed or authorized by the office [of mental retardation and] FOR
43 PEOPLE WITH developmental disabilities, or (iii) have been approved by
44 the commissioner [of mental retardation and] FOR PEOPLE WITH develop-
45 mental disabilities in accordance with regulations promulgated by such
46 commissioner. Such regulations shall require that a physician or
47 licensed psychologist possess specialized training or three years expe-
48 rience in treating [mental retardation] INTELLECTUAL DISABILITIES. A
49 record of such consultation shall be included in the [mentally retarded]
50 INTELLECTUALLY DISABLED person's medical record.
51 (b) The attending physician, as defined in subdivision two of section
52 twenty-nine hundred eighty of the public health law, with the concur-
53 rence of another physician with whom such attending physician shall
54 consult, must determine to a reasonable degree of medical certainty and
55 note on the [mentally retarded] INTELLECTUALLY DISABLED person's chart
56 that:

1 (i) the [mentally retarded] INTELLECTUALLY DISABLED person has a
2 medical condition as follows:
3 A. a terminal condition, as defined in subdivision twenty-three of
4 section twenty-nine hundred sixty-one of the public health law; or
5 B. permanent unconsciousness; or
6 C. a medical condition other than such person's [mental retardation]
7 INTELLECTUAL DISABILITY which requires life-sustaining treatment, is
8 irreversible and which will continue indefinitely; and
9 (ii) the life-sustaining treatment would impose an extraordinary
10 burden on such person, in light of:
11 A. such person's medical condition, other than such person's [mental
12 retardation] INTELLECTUAL DISABILITY; and
13 B. the expected outcome of the life-sustaining treatment, notwith-
14 standing such person's [mental retardation] INTELLECTUAL DISABILITY; and
15 (iii) in the case of a decision to withdraw or withhold artificially
16 provided nutrition or hydration:
17 A. there is no reasonable hope of maintaining life; or
18 B. the artificially provided nutrition or hydration poses an extraor-
19 dinary burden.
20 (c) The guardian shall express a decision to withhold or withdraw
21 life-sustaining treatment either:
22 (i) in writing, dated and signed in the presence of one witness eigh-
23 teen years of age or older who shall sign the decision, and presented to
24 the attending physician, as defined in subdivision two of section twenty-
25 nine hundred eighty of the public health law; or
26 (ii) orally, to two persons eighteen years of age or older, at least
27 one of whom is the [mentally retarded] INTELLECTUALLY DISABLED person's
28 attending physician, as defined in subdivision two of section twenty-
29 nine hundred eighty of the public health law.
30 (d) The attending physician, as defined in subdivision two of section
31 twenty-nine hundred eighty of the public health law, who is provided
32 with the decision of a guardian shall include the decision in the
33 [mentally retarded] INTELLECTUALLY DISABLED person's medical chart, and
34 shall either:
35 (i) promptly issue an order to withhold or withdraw life-sustaining
36 treatment from the [mentally retarded] INTELLECTUALLY DISABLED person,
37 and inform the staff responsible for such person's care, if any, of the
38 order; or
39 (ii) promptly object to such decision, in accordance with subdivision
40 five of this section.
41 (e) At least forty-eight hours prior to the implementation of a deci-
42 sion to withdraw life-sustaining treatment, or at the earliest possible
43 time prior to the implementation of a decision to withhold life-sustain-
44 ing treatment, the attending physician shall notify:
45 (i) the [mentally retarded] INTELLECTUALLY DISABLED person, except if
46 the attending physician determines, in writing and in consultation with
47 another physician or a licensed psychologist, that, to a reasonable
48 degree of medical certainty, the person would suffer immediate and
49 severe injury from such notification. The attending physician who makes
50 the confirmation, or the physician or licensed psychologist with whom
51 the attending physician consults, shall:
52 A. be employed by a developmental disabilities services office named
53 in section 13.17 of the mental hygiene law or employed by the office for
54 people with developmental disabilities to provide treatment and care to
55 people with developmental disabilities, or

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

4 C. have been approved by the commissioner [of mental retardation and]
5 FOR PEOPLE WITH developmental disabilities in accordance with regu-
6 lations promulgated by such commissioner. Such regulations shall require
7 that a physician or licensed psychologist possess specialized training
8 or three years experience in treating [mental retardation] INTELLECTUAL
9 DISABILITIES. A record of such consultation shall be included in the
10 [mentally retarded] INTELLECTUALLY DISABLED person's medical record;

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

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

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

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

27 (ii) a parent or adult sibling who either resides with or has main-
28 tained substantial and continuous contact with the [mentally retarded]
29 INTELLECTUALLY DISABLED person; or

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

32 (iv) any other health care practitioner providing services to the
33 [mentally retarded] INTELLECTUALLY DISABLED person, who is licensed
34 pursuant to article one hundred thirty-one, one hundred thirty-one-B,
35 one hundred thirty-two, one hundred thirty-three, one hundred thirty-
36 six, one hundred thirty-nine, one hundred forty-one, one hundred forty-
37 three, one hundred forty-four, one hundred fifty-three, one hundred
38 fifty-four, one hundred fifty-six, one hundred fifty-nine or one hundred
39 sixty-four of the education law; or

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

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

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

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

51 (c) Notification. In the event of the suspension of a health care
52 decision pursuant to this subdivision, the objecting party shall prompt-
53 ly notify the guardian and the other parties identified in paragraph (a)
54 of this subdivision, and the attending physician shall record such
55 suspension in the [mentally retarded] INTELLECTUALLY DISABLED person's
56 medical chart.

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

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

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

37 (b) Notwithstanding paragraph (a) of this subdivision, nothing in this
38 section shall be construed to require a private hospital to honor a
39 guardian's health care decision that the hospital would not honor if the
40 decision had been made by the [mentally retarded] INTELLECTUALLY DISA-
41 BLED person, if such person had capacity, because the decision is
42 contrary to a formally adopted written policy of the hospital expressly
43 based on religious beliefs or sincerely held moral convictions central
44 to the hospital's operating principles, and the hospital would be
45 permitted by law to refuse to honor the decision if made by such person,
46 provided:

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

49 (ii) the [mentally retarded] INTELLECTUALLY DISABLED person is trans-
50 ferred promptly to another hospital that is reasonably accessible under
51 the circumstances and is willing to honor the guardian's decision. If
52 the guardian is unable or unwilling to arrange such a transfer, the
53 hospital's refusal to honor the decision of the guardian shall consti-
54 tute an objection pursuant to subdivision five of this section.

55 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this
56 section shall be construed to require an individual health care provider

1 to honor a guardian's health care decision that the individual would not
2 honor if the decision had been made by the [mentally retarded] INTELLEC-
3 TUALLY DISABLED person, if such person had capacity, because the deci-
4 sion is contrary to the individual's religious beliefs or sincerely held
5 moral convictions, provided the individual health care provider promptly
6 informs the guardian and the facility, if any, of his or her refusal to
7 honor the guardian's decision. In such event, the facility shall prompt-
8 ly transfer responsibility for the [mentally retarded] INTELLECTUALLY
9 DISABLED person to another individual health care provider willing to
10 honor the guardian's decision. The individual health care provider shall
11 cooperate in facilitating such transfer of the patient.

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

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

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

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

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

35 S 1751. Petition for appointment; by whom made

36 A petition for the appointment of a guardian of the person or proper-
37 ty, or both, [of a mentally retarded] AN INTELLECTUALLY DISABLED or
38 developmentally disabled person may be made by a parent, any interested
39 person eighteen years of age or older on behalf of the [mentally
40 retarded] INTELLECTUALLY DISABLED or developmentally disabled person
41 including a corporation authorized to serve as a guardian as provided
42 for by this article, or by the [mentally retarded] INTELLECTUALLY DISA-
43 BLED or developmentally disabled person when such person is eighteen
44 years of age or older.

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

47 S 1752. Petition for appointment; contents

48 The petition for the appointment of a guardian shall be filed with the
49 court on forms to be prescribed by the state chief administrator of the
50 courts. Such petition for a guardian of [a mentally retarded] AN INTEL-
51 LECTUALLY DISABLED or developmentally disabled person shall include, but
52 not be limited to, the following information:

53 1. the full name, date of birth and residence of the [mentally
54 retarded] INTELLECTUALLY DISABLED or developmentally disabled person;

1 2. the name, age, address and relationship or interest of the peti-
2 tioner to the [mentally retarded] INTELLECTUALLY DISABLED or develop-
3 mentally disabled person;
4 3. the names of the father, the mother, children, adult siblings if
5 eighteen years of age or older, the spouse and primary care physician if
6 other than a physician having submitted a certification with the peti-
7 tion, if any, of the [mentally retarded] INTELLECTUALLY DISABLED or
8 developmentally disabled person and whether or not they are living, and
9 if living, their addresses and the names and addresses of the nearest
10 distributees of full age who are domiciliaries, if both parents are
11 dead;
12 4. the name and address of the person with whom the [mentally
13 retarded] INTELLECTUALLY DISABLED or developmentally disabled person
14 resides if other than the parents or spouse;
15 5. the name, age, address, education and other qualifications, and
16 consent of the proposed guardian, standby and alternate guardian, if
17 other than the parent, spouse, adult child if eighteen years of age or
18 older or adult sibling if eighteen years of age or older, and if such
19 parent, spouse or adult child be living, why any of them should not be
20 appointed guardian;
21 6. the estimated value of real and personal property and the annual
22 income therefrom and any other income including governmental entitle-
23 ments to which the [mentally retarded] INTELLECTUALLY DISABLED or devel-
24 opmentally disabled person is entitled; and
25 7. any circumstances which the court should consider in determining
26 whether it is in the best interests of the [mentally retarded] INTELLEC-
27 TUALLY DISABLED or developmentally disabled person not be [be] present
28 at the hearing if conducted.

29 S 7. Section 1753 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 1753. Persons to be served

32 1. Upon presentation of the petition, process shall issue to:
33 (a) the parent or parents, adult children, if the petitioner is other
34 than a parent, adult siblings, if the petitioner is other than a parent,
35 and if the [mentally retarded] INTELLECTUALLY DISABLED or develop-
36 mentally disabled person is married, to the spouse, if their residences
37 are known;
38 (b) the person having care and custody of the [mentally retarded]
39 INTELLECTUALLY DISABLED or developmentally disabled person, or with whom
40 such person resides if other than the parents or spouse; and
41 (c) the [mentally retarded] INTELLECTUALLY DISABLED or developmentally
42 disabled person if fourteen years of age or older for whom an applica-
43 tion has been made in such person's behalf.

44 2. Upon presentation of the petition, notice of such petition shall be
45 served by certified mail to:
46 (a) the adult siblings if the petitioner is a parent, and adult chil-
47 dren if the petitioner is a parent;
48 (b) the mental hygiene legal service in the judicial department where
49 the facility, as defined in subdivision (a) of section 47.01 of the
50 mental hygiene law, is located if the [mentally retarded] INTELLECTUALLY
51 DISABLED or developmentally disabled person resides in such a facility;
52 (c) in all cases, to the director in charge of a facility licensed or
53 operated by an agency of the state of New York, if the [mentally
54 retarded] INTELLECTUALLY DISABLED or developmentally disabled person
55 resides in such facility;

1 (d) one other person if designated in writing by the [mentally
2 retarded] INTELLECTUALLY DISABLED or developmentally disabled person;
3 and

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

5 3. No process or notice shall be necessary to a parent, adult child,
6 adult sibling, or spouse of the [mentally retarded] INTELLECTUALLY DISA-
7 BLED or developmentally disabled person who has been declared by a court
8 as being incompetent. In addition, no process or notice shall be neces-
9 sary to a spouse who is divorced from the [mentally retarded] INTELLEC-
10 TUALLY DISABLED or developmentally disabled person, and to a parent,
11 adult child, adult sibling when it shall appear to the satisfaction of
12 the court that such person or persons have abandoned the [mentally
13 retarded] INTELLECTUALLY DISABLED or developmentally disabled person.

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

17 1. Upon a petition for the appointment of a guardian of [a mentally
18 retarded] AN INTELLECTUALLY DISABLED or developmentally disabled person
19 eighteen years of age or older, the court shall conduct a hearing at
20 which such person shall have the right to jury trial. The right to a
21 jury trial shall be deemed waived by failure to make a demand therefor.
22 The court may in its discretion dispense with a hearing for the appoint-
23 ment of a guardian, and may in its discretion appoint a guardian ad
24 litem, or the mental hygiene legal service if such person is a resident
25 of a mental hygiene facility as defined in subdivision (a) of section
26 47.01 of the mental hygiene law, to recommend whether the appointment of
27 a guardian as proposed in the application is in the best interest of the
28 [mentally retarded] INTELLECTUALLY DISABLED or developmentally disabled
29 person, provided however, that such application has been made by:

30 (a) both parents or the survivor; or

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

32 (c) any interested party and the consent of each parent.

33 2. When it shall appear to the satisfaction of the court that a parent
34 or parents not joining in or consenting to the application have aban-
35 doned the [mentally retarded] INTELLECTUALLY DISABLED or developmentally
36 disabled person or are not otherwise required to receive notice, the
37 court may dispense with such parent's consent in determining the need to
38 conduct a hearing for a person under the age of eighteen. However, if
39 the consent of both parents or the surviving parent is dispensed with by
40 the court, a hearing shall be held on the application.

41 3. If a hearing is conducted, the [mentally retarded] INTELLECTUALLY
42 DISABLED or developmentally disabled person shall be present unless it
43 shall appear to the satisfaction of the court on the certification of
44 the certifying physician that the [mentally retarded] INTELLECTUALLY
45 DISABLED or developmentally disabled person is medically incapable of
46 being present to the extent that attendance is likely to result in phys-
47 ical harm to such [mentally retarded] INTELLECTUALLY DISABLED or devel-
48 opmentally disabled person, or under such other circumstances which the
49 court finds would not be in the best interest of the [mentally retarded]
50 INTELLECTUALLY DISABLED or developmentally disabled person.

51 4. If either a hearing is dispensed with pursuant to subdivisions one
52 and two of this section or the [mentally retarded] INTELLECTUALLY DISA-
53 BLED or developmentally disabled person is not present at the hearing
54 pursuant to subdivision three of this section, the court may appoint a
55 guardian ad litem if no mental hygiene legal service attorney is author-
56 ized to act on behalf of the [mentally retarded] INTELLECTUALLY DISABLED

1 or developmentally disabled person. The guardian ad litem or mental
2 hygiene legal service attorney, if appointed, shall personally interview
3 the [mentally retarded] INTELLECTUALLY DISABLED or developmentally disa-
4 bled person and shall submit a written report to the court.

5 5. If, upon conclusion of such hearing or jury trial or if none be
6 held upon the application, the court is satisfied that the best inter-
7 ests of the [mentally retarded] INTELLECTUALLY DISABLED or develop-
8 mentally disabled person will be promoted by the appointment of a guard-
9 ian of the person or property, or both, it shall make a decree naming
10 such person or persons to serve as such guardians.

11 S 9. Section 1755 of the surrogate's court procedure act, as added by
12 chapter 675 of the laws of 1989, is amended to read as follows:

13 S 1755. Modification order

14 Any [mentally retarded] INTELLECTUALLY DISABLED or developmentally
15 disabled person eighteen years of age or older, or any person on behalf
16 of any [mentally retarded] INTELLECTUALLY DISABLED or developmentally
17 disabled person for whom a guardian has been appointed, may apply to the
18 court having jurisdiction over the guardianship order requesting modifi-
19 cation of such order in order to protect the [mentally retarded] INTEL-
20 LECTUALLY DISABLED or developmentally disabled person's financial situ-
21 ation and/or his or her personal interests. The court may, upon receipt
22 of any such request to modify the guardianship order, appoint a guardian
23 ad litem. The court shall so modify the guardianship order if in its
24 judgment the interests of the guardian are adverse to those of the
25 [mentally retarded] INTELLECTUALLY DISABLED or developmentally disabled
26 person or if the interests of justice will be best served including, but
27 not limited to, facts showing the necessity for protecting the personal
28 and/or financial interests of the [mentally retarded] INTELLECTUALLY
29 DISABLED or developmentally disabled person.

30 S 10. Section 1756 of the surrogate's court procedure act, as added by
31 chapter 675 of the laws of 1989, is amended to read as follows:

32 S 1756. Limited guardian of the property

33 When it shall appear to the satisfaction of the court that such
34 [mentally retarded] INTELLECTUALLY DISABLED or developmentally disabled
35 person for whom an application for guardianship is made is eighteen
36 years of age or older and is wholly or substantially self-supporting by
37 means of his or her wages or earnings from employment, the court is
38 authorized and empowered to appoint a limited guardian of the property
39 of such [mentally retarded] INTELLECTUALLY DISABLED or developmentally
40 disabled person who shall receive, manage, disburse and account for only
41 such property of said [mentally retarded] INTELLECTUALLY DISABLED or
42 developmentally disabled person as shall be received from other than the
43 wages or earnings of said person.

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

52 S 11. Section 1757 of the surrogate's court procedure act, as added by
53 chapter 675 of the laws of 1989, the section heading as amended by chap-
54 ter 290 of the laws of 1992, subdivision 2 as amended by chapter 260 of
55 the laws of 2009, and subdivision 3 as added by chapter 294 of the laws
56 of 2012, is amended to read as follows:

1 S 1757. Standby guardian of [a mentally retarded] AN INTELLECTUALLY
2 DISABLED or developmentally disabled person

3 1. Upon application, a standby guardian of the person or property or
4 both of [a mentally retarded] AN INTELLECTUALLY DISABLED or develop-
5 mentally disabled person may be appointed by the court. The court may
6 also, upon application, appoint an alternate and/or successive alter-
7 nates to such standby guardian, to act if such standby guardian shall
8 die, or become incapacitated, or shall renounce. Such appointments by
9 the court shall be made in accordance with the provisions of this arti-
10 cle.

11 2. Such standby guardian, or alternate in the event of such standby
12 guardian's death, incapacity or renunciation, shall without further
13 proceedings be empowered to assume the duties of his or her office imme-
14 diately upon death, renunciation or adjudication of incompetency of the
15 guardian or standby guardian appointed pursuant to this article, subject
16 only to confirmation of his or her appointment by the court within one
17 hundred eighty days following assumption of his or her duties of such
18 office. Before confirming the appointment of the standby guardian or
19 alternate guardian, the court may conduct a hearing pursuant to section
20 seventeen hundred fifty-four of this article upon petition by anyone on
21 behalf of the [mentally retarded] INTELLECTUALLY DISABLED or develop-
22 mentally disabled person or the [mentally retarded] INTELLECTUALLY DISA-
23 BLED or developmentally disabled person if such person is eighteen years
24 of age or older, or upon its discretion.

25 3. Failure of a standby or alternate standby guardian to assume the
26 duties of guardian, seek court confirmation or to renounce the guardian-
27 ship within sixty days of written notice by certified mail or personal
28 delivery given by or on behalf of the [mentally retarded] INTELLECTUALLY
29 DISABLED or developmentally disabled person of a prior guardian's
30 inability to serve and the standby or alternate standby guardian's duty
31 to serve, seek court confirmation or renounce such role shall allow the
32 court to:

33 (a) deem the failure an implied renunciation of guardianship, and
34 (b) authorize, notwithstanding the time period provided for in subdivi-
35 sion two of this section to seek court confirmation, any remaining
36 standby or alternate standby guardian to serve in such capacity provided
37 (i) an application for confirmation and appropriate notices pursuant to
38 subdivision one of section seventeen hundred fifty-three of this article
39 are filed, or (ii) an application for modification of the guardianship
40 order pursuant to section seventeen hundred fifty-five of this article
41 is filed.

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

44 S 1758. Court jurisdiction

45 1. The jurisdiction of the court to hear proceedings pursuant to this
46 article shall be subject to article eighty-three of the mental hygiene
47 law.

48 2. After the appointment of a guardian, standby guardian or alternate
49 guardians, the court shall have and retain general jurisdiction over the
50 [mentally retarded] INTELLECTUALLY DISABLED or developmentally disabled
51 person for whom such guardian shall have been appointed, to take of its
52 own motion or to entertain and adjudicate such steps and proceedings
53 relating to such guardian, standby, or alternate guardianship as may be
54 deemed necessary or proper for the welfare of such [mentally retarded]
55 INTELLECTUALLY DISABLED or developmentally disabled person.

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

3 S 1759. Duration of guardianship

4 1. Such guardianship shall not terminate at the age of majority or
5 marriage of such [mentally retarded] INTELLECTUALLY DISABLED or develop-
6 mentally disabled person but shall continue during the life of such
7 person, or until terminated by the court.

8 2. A person eighteen years or older for whom such a guardian has been
9 previously appointed or anyone, including the guardian, on behalf of [a
10 mentally retarded] AN INTELLECTUALLY DISABLED or developmentally disa-
11 bled person for whom a guardian has been appointed may petition the
12 court which made such appointment or the court in his or her county of
13 residence to have the guardian discharged and a successor appointed, or
14 to have the guardian of the property designated as a limited guardian of
15 the property, or to have the guardianship order modified, dissolved or
16 otherwise amended. Upon such a petition for review, the court shall
17 conduct a hearing pursuant to section seventeen hundred fifty-four of
18 this article.

19 3. Upon marriage of such [mentally retarded] INTELLECTUALLY DISABLED
20 or developmentally disabled person for whom such a guardian has been
21 appointed, the court shall, upon request of the [mentally retarded]
22 INTELLECTUALLY DISABLED or developmentally disabled person, spouse, or
23 any other person acting on behalf of the [mentally retarded] INTELLECTU-
24 ALLY DISABLED or developmentally disabled person, review the need, if
25 any, to modify, dissolve or otherwise amend the guardianship order
26 including, but not limited to, the appointment of the spouse as standby
27 guardian. The court, in its discretion, may conduct such review pursu-
28 ant to section seventeen hundred fifty-four of this article.

29 S 14. Section 1760 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 1760. Corporate guardianship

32 No corporation may be appointed guardian of the person under the
33 provisions of this article, except that a non-profit corporation organ-
34 ized and existing under the laws of the state of New York and having the
35 corporate power to act as guardian of [mentally retarded] INTELLECTUALLY
36 DISABLED or developmentally disabled persons may be appointed as the
37 guardian of the person only of such [mentally retarded] INTELLECTUALLY
38 DISABLED or developmentally disabled person.

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

41 S 1761. Application of other provisions

42 To the extent that the context thereof shall admit, the provisions of
43 article seventeen of this act shall apply to all proceedings under this
44 article with the same force and [affect] EFFECT as if an "infant", as
45 therein referred to, were [a "mentally retarded"] AN "INTELLECTUALLY
46 DISABLED" or "developmentally disabled person" as herein defined, and a
47 "guardian" as therein referred to were a "guardian of the [mentally
48 retarded] INTELLECTUALLY DISABLED person" or a "guardian of a develop-
49 mentally disabled person" as herein provided for.

50 S 16. This act shall take effect immediately.