

# STATE OF NEW YORK

8171--A

2017-2018 Regular Sessions

## IN ASSEMBLY

June 1, 2017

Introduced by M. of A. LAVINE, WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the surrogate's court procedure act and the judiciary law, in relation to replacing the term intellectually disabled with developmentally disabled; and guardianship and health care decisions of persons with developmental disabilities; and to repeal section 1750-a of the surrogate's court procedure act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1750 of the surrogate's court procedure act, as  
2 amended by chapter 198 of the laws of 2016, is amended to read as  
3 follows:  
4 § 1750. Guardianship of persons [~~who are intellectually disabled~~] with  
5 developmental disabilities  
6 1. When it shall appear to the satisfaction of the court that a person  
7 is a person [~~who is intellectually disabled~~] with a developmental disa-  
8 bility within the meaning of subdivision twenty-two of section 1.03 of  
9 the mental hygiene law, and that such person, as a result of such devel-  
10 opmental disability, exhibits significant impairment of general or  
11 specific areas of intellectual functioning and/or adaptive behaviors in  
12 specified domains as enumerated in subdivision eight of section seven-  
13 teen hundred fifty-two of this article, the court is authorized to  
14 appoint a guardian of the person or of the property or of both if such  
15 appointment of a guardian or guardians is [~~in the best interest of~~]  
16 shown by clear and convincing evidence that the person [~~who is intellec-~~  
17 ~~tually disabled~~] with a developmental disability is likely to suffer  
18 harm or is unable to provide for personal needs and/or property manage-  
19 ment needs or cannot adequately understand and appreciate the nature and  
20 consequences of such inability, and where the respondent has unmet

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

LBD10185-05-7

1 needs. Such appointment shall be made pursuant to the provisions of  
2 this article [~~7, provided however that the provisions of section seventeen~~  
3 ~~hundred fifty-a of this article shall not apply to the appointment of a~~  
4 ~~guardian or guardians of a person who is intellectually disabled~~]. The  
5 nature and duration of the guardianship must bear a reasonable relation  
6 to the purpose for which the person is appointed a guardian.

7 [~~1. For the purposes of this article, a person who is intellectually~~  
8 ~~disabled is a person who has been certified by one licensed physician~~  
9 ~~and one licensed psychologist, or by two licensed physicians at least~~  
10 ~~one of whom is familiar with or has professional knowledge in the care~~  
11 ~~and treatment of persons with an intellectual disability, having quali-~~  
12 ~~fications to make such certification, as being incapable to manage him~~  
13 ~~or herself and/or his or her affairs by reason of intellectual disabili-~~  
14 ~~ty and that such condition is permanent in nature or likely to continue~~  
15 ~~indefinitely.~~]

16 2. Every guardianship entered into pursuant to this article prior to  
17 the effective date of this subdivision, including orders and decrees  
18 pursuant to section seventeen hundred fifty-seven of this article, shall  
19 remain in full force and effect thereafter, except as amended pursuant  
20 to section seventeen hundred fifty-five of this article or as ordered by  
21 the court; and any such guardianship shall be administered consistent  
22 with the substantive and procedural requirements set forth in this arti-  
23 cle.

24 3. Every [~~such certification pursuant to subdivision one of this~~  
25 ~~section,~~] order and decree made on or after the effective date of this  
26 subdivision, shall include a specific determination by [~~such physician~~  
27 ~~and psychologist, or by such physicians,~~] the issuing court as to wheth-  
28 er the person [~~who is intellectually disabled~~] with a developmental  
29 disability has the capacity to make health care decisions, as defined by  
30 subdivision three of section twenty-nine hundred eighty of the public  
31 health law, for himself or herself. A determination that the person [~~who~~  
32 ~~is intellectually disabled~~] with a developmental disability has the  
33 capacity to make health care decisions shall not preclude the appoint-  
34 ment of a guardian pursuant to this section to make other decisions on  
35 behalf of the person [~~who is intellectually disabled~~] with a develop-  
36 mental disability. The absence of this determination in the case of  
37 guardians appointed prior to [~~the effective date of this subdivision~~]  
38 March sixteenth, two thousand three, shall not preclude such guardians  
39 from making health care decisions. Further, guardians appointed by  
40 orders and/or decrees issued prior to the effective date of this subdivi-  
41 vision shall have authority in all areas, unless otherwise stated.

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

44 § 3. Section 1750-b of the surrogate's court procedure act, as amended  
45 by chapter 198 of the laws of 2016, is amended to read as follows:

46 § 1750-b. Health care decisions for persons [~~who are intellectually~~  
47 ~~disabled~~] with developmental disabilities

48 1. Scope of authority. As used in this section the term "develop-  
49 mental disability" shall have the same meaning as defined in subdivision  
50 twenty-two of section 1.03 of the mental hygiene law. Unless specif-  
51 ically prohibited by the court after consideration of [~~the determi-~~  
52 ~~nation, if any, regarding~~] a person [~~who is intellectually disabled's~~]  
53 with a developmental disability's capacity to make health care deci-  
54 sions, which is required by section seventeen hundred fifty of this  
55 article, the guardian of such person appointed pursuant to section  
56 seventeen hundred fifty of this article shall have the authority to make

1 any and all health care decisions, as defined by subdivision six of  
2 section twenty-nine hundred eighty of the public health law, on behalf  
3 of the person [~~who is intellectually disabled~~] with a developmental  
4 disability that such person could make if such person had capacity. Such  
5 decisions may include decisions to withhold or withdraw life-sustaining  
6 treatment. For purposes of this section, "life-sustaining treatment"  
7 means medical treatment, including cardiopulmonary resuscitation and  
8 nutrition and hydration provided by means of medical treatment, which is  
9 sustaining life functions and without which, according to reasonable  
10 medical judgment, the patient will die within a relatively short time  
11 period. Cardiopulmonary resuscitation is presumed to be life-sustaining  
12 treatment without the necessity of a medical judgment by an attending  
13 physician. The provisions of this article are not intended to permit or  
14 promote suicide, assisted suicide or euthanasia; accordingly, nothing in  
15 this section shall be construed to permit a guardian to consent to any  
16 act or omission to which the person [~~who is intellectually disabled~~]  
17 with a developmental disability could not consent if such person had  
18 capacity.

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

51 In the case of a person for whom no guardian has been appointed pursu-  
52 ant to this article or for whom there is no qualified family member or  
53 the Willowbrook consumer advisory board available to make such a deci-  
54 sion, a "guardian" shall also mean, notwithstanding the definitions in  
55 section 80.03 of the mental hygiene law, a surrogate decision-making  
56 committee, as defined in article eighty of the mental hygiene law. All

1 declarations and procedures, including expedited procedures, to comply  
2 with this section shall be established by regulations promulgated by the  
3 [~~commission on quality of care and advocacy for persons with disabili-~~  
4 ~~ties~~] justice center for the protection of people with special needs, as  
5 established by article twenty of the executive law.

6 (b) Regulations establishing the prioritized list of qualified family  
7 members required by paragraph (a) of this subdivision shall be developed  
8 by the commissioner of the office for people with developmental disabil-  
9 ities in conjunction with parents, advocates and family members of  
10 persons [~~who are intellectually disabled~~] with developmental disabili-  
11 ties. Regulations to implement the authority of the Willowbrook consumer  
12 advisory board pursuant to paragraph (a) of this subdivision may be  
13 promulgated by the commissioner of the office for people with develop-  
14 mental disabilities with advice from the Willowbrook consumer advisory  
15 board.

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

20 2. Decision-making standard. (a) The guardian shall base all advocacy  
21 and health care decision-making solely and exclusively on the best  
22 interests of the person [~~who is intellectually disabled~~] with a develop-  
23 mental disability and, when reasonably known or ascertainable with  
24 reasonable diligence, on [~~the person who is intellectually disabled's~~]  
25 such person's wishes, including moral and religious beliefs.

26 (b) An assessment of the person [~~who is intellectually disabled's~~]  
27 with a developmental disability's best interests shall include consider-  
28 ation of:

- 29 (i) the dignity and uniqueness of every person;  
30 (ii) the preservation, improvement or restoration of the person [~~who~~  
31 ~~is intellectually disabled's~~] with a developmental disability's health;  
32 (iii) the relief of the person [~~who is intellectually disabled's~~] with  
33 a developmental disability's suffering by means of palliative care and  
34 pain management;  
35 (iv) the unique nature of artificially provided nutrition or  
36 hydration, and the effect it may have on the person [~~who is intellectu-~~  
37 ~~ally disabled~~] with a developmental disability; and  
38 (v) the entire medical condition of the person.

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

40 (i) a presumption that persons [~~who are intellectually disabled~~] with  
41 developmental disabilities are not entitled to the full and equal  
42 rights, equal protection, respect, medical care and dignity afforded to  
43 persons without [~~an intellectual disability or a~~] developmental [~~disa-~~  
44 ~~bility~~] disabilities; or

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

47 3. Right to receive information. Subject to the provisions of sections  
48 33.13 and 33.16 of the mental hygiene law, the guardian shall have the  
49 right to receive all medical information and medical and clinical  
50 records necessary to make informed decisions regarding the person [~~who~~  
51 ~~is intellectually disabled's~~] with a developmental disability's health  
52 care.

53 4. Life-sustaining treatment. The guardian shall have the affirmative  
54 obligation to advocate for the full and efficacious provision of health  
55 care, including life-sustaining treatment. In the event that a guardian  
56 makes a decision to withdraw or withhold life-sustaining treatment from

1 a person [~~who is intellectually disabled~~] with a developmental disabili-  
2 ty:

3 (a) The attending physician, as defined in subdivision two of section  
4 twenty-nine hundred eighty of the public health law, must confirm to a  
5 reasonable degree of medical certainty that the person [~~who is intellec-~~  
6 ~~tually disabled~~] with a developmental disability lacks capacity to make  
7 health care decisions. The determination thereof shall be included in  
8 the person [~~who is intellectually disabled's~~] with a developmental disa-  
9 bility's medical record, and shall contain such attending physician's  
10 opinion regarding the cause and nature of the person [~~who is intellectu-~~  
11 ~~ally disabled's~~] with a developmental disability's incapacity as well as  
12 its extent and probable duration. The attending physician who makes the  
13 confirmation shall consult with another physician, or a licensed  
14 psychologist, to further confirm the person [~~who is intellectually disa-~~  
15 ~~bled's~~] with a developmental disability's lack of capacity. The attend-  
16 ing physician who makes the confirmation, or the physician or licensed  
17 psychologist with whom the attending physician consults, must (i) be  
18 employed by a developmental disabilities services office named in  
19 section 13.17 of the mental hygiene law or employed by the office for  
20 people with developmental disabilities to provide treatment and care to  
21 people with developmental disabilities, or (ii) have been employed for a  
22 minimum of two years to render care and service in a facility or program  
23 operated, licensed or authorized by the office for people with develop-  
24 mental disabilities, or (iii) have been approved by the commissioner of  
25 the office for people with developmental disabilities in accordance with  
26 regulations promulgated by such commissioner. Such regulations shall  
27 require that a physician or licensed psychologist possess specialized  
28 training or three years experience in treating [~~intellectual disability~~]  
29 persons with developmental disabilities. A record of such consultation  
30 shall be included in the person [~~who is intellectually disabled's~~] with  
31 developmental disability's medical record.

32 (b) The attending physician, as defined in subdivision two of section  
33 twenty-nine hundred eighty of the public health law, with the concur-  
34 rence of another physician with whom such attending physician shall  
35 consult, must determine to a reasonable degree of medical certainty and  
36 note on the person [~~who is intellectually disabled's~~] with a develop-  
37 mental disability's chart that:

38 (i) the person [~~who is intellectually disabled~~] with a developmental  
39 disability has a medical condition as follows:

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

42 B. permanent unconsciousness; or

43 C. a medical condition other than such person's [~~intellectual disabili-~~  
44 ~~ty~~] developmental disability which requires life-sustaining treatment,  
45 is irreversible and which will continue indefinitely; and

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

48 A. such person's medical condition, other than such person's [~~intel-~~  
49 ~~lectual disability~~] developmental disability; and

50 B. the expected outcome of the life-sustaining treatment, notwith-  
51 standing such person's [~~intellectual disability~~] developmental disabili-  
52 ty; and

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

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

1 B. the artificially provided nutrition or hydration poses an extraor-  
2 dinary burden.

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

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

9 (ii) orally, to two persons eighteen years of age or older, at least  
10 one of whom is the person [~~who is intellectually disabled's~~] with a  
11 developmental disability's attending physician, as defined in subdivi-  
12 sion two of section twenty-nine hundred eighty of the public health law.

13 (d) The attending physician, as defined in subdivision two of section  
14 twenty-nine hundred eighty of the public health law, who is provided  
15 with the decision of a guardian shall include the decision in the person  
16 [~~who is intellectually disabled's~~] with a developmental disability's  
17 medical chart, and shall either:

18 (i) promptly issue an order to withhold or withdraw life-sustaining  
19 treatment from the person [~~who is intellectually disabled~~] with a devel-  
20 opmental disability, and inform the staff responsible for such person's  
21 care, if any, of the order; or

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

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

28 (i) the person [~~who is intellectually disabled~~] with a developmental  
29 disability, except if the attending physician determines, in writing and  
30 in consultation with another physician or a licensed psychologist, that,  
31 to a reasonable degree of medical certainty, the person would suffer  
32 immediate and severe injury from such notification. The attending physi-  
33 cian who makes the confirmation, or the physician or licensed psychol-  
34 ogist with whom the attending physician consults, shall:

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

39 B. have been employed for a minimum of two years to render care and  
40 service in a facility operated, licensed or authorized by the office for  
41 people with developmental disabilities, or

42 C. have been approved by the commissioner of the office for people  
43 with developmental disabilities in accordance with regulations promul-  
44 gated by such commissioner. Such regulations shall require that a physi-  
45 cian or licensed psychologist possess specialized training or three  
46 years experience in treating [~~intellectual disability~~] developmental  
47 disabilities. A record of such consultation shall be included in the  
48 person [~~who is intellectually disabled's~~] with a developmental disabili-  
49 ty's medical record;

50 (ii) if the person is in or was transferred from a residential facili-  
51 ty operated, licensed or authorized by the office for people with devel-  
52 opmental disabilities, the chief executive officer of the agency or  
53 organization operating such facility and the mental hygiene legal  
54 service; and

1 (iii) if the person is not in and was not transferred from such a  
2 facility or program, the commissioner of the office for people with  
3 developmental disabilities, or his or her designee.

4 5. Objection to health care decision. (a) Suspension. A health care  
5 decision made pursuant to subdivision four of this section shall be  
6 suspended, pending judicial review, except if the suspension would in  
7 reasonable medical judgment be likely to result in the death of the  
8 person [~~who is intellectually disabled~~] with a developmental disability,  
9 in the event of an objection to that decision at any time by:

10 (i) the person [~~who is intellectually disabled~~] with a developmental  
11 disability on whose behalf such decision was made; or

12 (ii) a parent or adult sibling who either resides with or has main-  
13 tained substantial and continuous contact with the person [~~who is intel-~~  
14 ~~lectually disabled~~] with a developmental disability; or

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

17 (iv) any other health care practitioner providing services to the  
18 person [~~who is intellectually disabled~~] with a developmental disability,  
19 who is licensed pursuant to article one hundred thirty-one, one hundred  
20 thirty-one-B, one hundred thirty-two, one hundred thirty-three, one  
21 hundred thirty-six, one hundred thirty-nine, one hundred forty-one, one  
22 hundred forty-three, one hundred forty-four, one hundred fifty-three,  
23 one hundred fifty-four, one hundred fifty-six, one hundred fifty-nine or  
24 one hundred sixty-four of the education law; or

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

27 (vi) if the person is in or was transferred from a residential facili-  
28 ty or program operated, approved or licensed by the office for people  
29 with developmental disabilities, the mental hygiene legal service; or

30 (vii) if the person is not in and was not transferred from such a  
31 facility or program, the commissioner of the office for people with  
32 developmental disabilities, or his or her designee.

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

35 (c) Notification. In the event of the suspension of a health care  
36 decision pursuant to this subdivision, the objecting party shall prompt-  
37 ly notify the guardian and the other parties identified in paragraph (a)  
38 of this subdivision, and the attending physician shall record such  
39 suspension in the person [~~who is intellectually disabled's~~] with a  
40 developmental disability's medical chart.

41 (d) Dispute mediation. In the event of an objection pursuant to this  
42 subdivision, at the request of the objecting party or person or entity  
43 authorized to act as a guardian under this section, except a surrogate  
44 decision making committee established pursuant to article eighty of the  
45 mental hygiene law, such objection shall be referred to a dispute medi-  
46 ation system, established pursuant to section two thousand nine hundred  
47 seventy-two of the public health law or similar entity for mediating  
48 disputes in a hospice, such as a patient's advocate's office, hospital  
49 chaplain's office or ethics committee, as described in writing and  
50 adopted by the governing authority of such hospice, for non-binding  
51 mediation. In the event that such dispute cannot be resolved within  
52 seventy-two hours or no such mediation entity exists or is reasonably  
53 available for mediation of a dispute, the objection shall proceed to  
54 judicial review pursuant to this subdivision. The party requesting medi-  
55 ation shall provide notification to those parties entitled to notice  
56 pursuant to paragraph (a) of this subdivision.

1 6. Special proceeding authorized. The guardian, the attending physi-  
2 cian, as defined in subdivision two of section twenty-nine hundred  
3 eighty of the public health law, the chief executive officer identified  
4 in subparagraph (ii) of paragraph (e) of subdivision four of this  
5 section, the mental hygiene legal service (if the person is in or was  
6 transferred from a residential facility or program operated, approved or  
7 licensed by the office for people with developmental disabilities) or  
8 the commissioner of the office for people with developmental disabili-  
9 ties or his or her designee (if the person is not in and was not trans-  
10 ferred from such a facility or program) may commence a special proceed-  
11 ing in a court of competent jurisdiction with respect to any dispute  
12 arising under this section, including objecting to the withdrawal or  
13 withholding of life-sustaining treatment because such withdrawal or  
14 withholding is not in accord with the criteria set forth in this  
15 section.

16 7. Provider's obligations. (a) A health care provider shall comply  
17 with the health care decisions made by a guardian in good faith pursuant  
18 to this section, to the same extent as if such decisions had been made  
19 by the person [~~who is intellectually disabled~~] with a developmental  
20 disability, if such person had capacity.

21 (b) Notwithstanding paragraph (a) of this subdivision, nothing in this  
22 section shall be construed to require a private hospital to honor a  
23 guardian's health care decision that the hospital would not honor if the  
24 decision had been made by the person [~~who is intellectually disabled~~]  
25 with a developmental disability, if such person had capacity, because  
26 the decision is contrary to a formally adopted written policy of the  
27 hospital expressly based on religious beliefs or sincerely held moral  
28 convictions central to the hospital's operating principles, and the  
29 hospital would be permitted by law to refuse to honor the decision if  
30 made by such person, provided:

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

33 (ii) the person [~~who is intellectually disabled~~] with a developmental  
34 disability is transferred promptly to another hospital that is reason-  
35 ably accessible under the circumstances and is willing to honor the  
36 guardian's decision. If the guardian is unable or unwilling to arrange  
37 such a transfer, the hospital's refusal to honor the decision of the  
38 guardian shall constitute an objection pursuant to subdivision five of  
39 this section.

40 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this  
41 section shall be construed to require an individual health care provider  
42 to honor a guardian's health care decision that the individual would not  
43 honor if the decision had been made by the person [~~who is intellectually~~  
44 ~~disabled~~] with a developmental disability, if such person had capacity,  
45 because the decision is contrary to the individual's religious beliefs  
46 or sincerely held moral convictions, provided the individual health care  
47 provider promptly informs the guardian and the facility, if any, of his  
48 or her refusal to honor the guardian's decision. In such event, the  
49 facility shall promptly transfer responsibility for the person [~~who is~~  
50 ~~intellectually disabled~~] with a developmental disability to another  
51 individual health care provider willing to honor the guardian's deci-  
52 sion. The individual health care provider shall cooperate in facilitat-  
53 ing such transfer of the patient.

54 (d) Notwithstanding the provisions of any other paragraph of this  
55 subdivision, if a guardian directs the provision of life-sustaining  
56 treatment, the denial of which in reasonable medical judgment would be

1 likely to result in the death of the person [~~who is intellectually disa-~~  
2 ~~bled~~] with a developmental disability, a hospital or individual health  
3 care provider that does not wish to provide such treatment shall none-  
4 theless comply with the guardian's decision pending either transfer of  
5 the person [~~who is intellectually disabled~~] with a developmental disa-  
6 bility to a willing hospital or individual health care provider, or  
7 judicial review.

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

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

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

20 § 4. Section 1751 of the surrogate's court procedure act, as amended  
21 by chapter 198 of the laws of 2016, is amended to read as follows:

22 § 1751. Petition for appointment; by whom made

23 (a) A petition for the appointment of a guardian [~~of the person or~~  
24 ~~property, or both,~~] of a person [~~who is intellectually disabled or a~~  
25 ~~person who is developmentally disabled~~] with a developmental disability  
26 pursuant to this article may be made by the person with a developmental  
27 disability when such person is eighteen years of age or older, a parent,  
28 spouse, sibling, adult child or any other interested person eighteen  
29 years of age or older on behalf of the person [~~who is intellectually~~  
30 ~~disabled or a person who is developmentally disabled~~] with a develop-  
31 mental disability including a corporation authorized to serve as a guar-  
32 dian as provided for by this article[~~, or by the person who is intellec-~~  
33 ~~tually disabled or a person who is developmentally disabled when such~~  
34 ~~person is eighteen years of age or older~~].

35 (b) A person with a developmental disability may knowingly and volun-  
36 tarily consent to the appointment of a guardian pursuant to this arti-  
37 cle.

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

40 § 1751-a. Petition for appointment; where made (venue)

41 1. A proceeding under this article shall be brought in the surrogate's  
42 court within the county in which the person with a developmental disa-  
43 bility resides, or is physically present at the time the proceeding is  
44 commenced. If the person with a developmental disability alleged to be  
45 in need of a guardian is being cared for as a resident in a facility,  
46 the residence of that person shall be deemed to be in the county where  
47 the facility is located and the proceeding shall be brought in that  
48 county, subject to application by an interested party for a change in  
49 venue to another county due to inconvenience to the parties or  
50 witnesses, or due to the condition of the person alleged to be in need  
51 of a guardian.

52 2. After the appointment of a guardian, any proceeding to modify a  
53 prior order shall be brought in the surrogate's court which granted the  
54 prior order, unless at the time of the application to modify the order  
55 the person with a developmental disability resides elsewhere, in which  
56 case the proceeding shall be brought in the county where the person with

1 a developmental disability resides, without the need for a motion to  
2 transfer venue.

3 § 6. Section 1752 of the surrogate's court procedure act, as amended  
4 by chapter 198 of the laws of 2016, is amended to read as follows:

5 § 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 person [~~who is intellectually~~  
9 ~~disabled or a person who is developmentally disabled~~] with a develop-  
10 mental disability shall include, but not be limited to, the following  
11 information:

12 1. the full name, date of birth and residence of the person [~~who is~~  
13 ~~intellectually disabled or a person who is developmentally disabled~~]  
14 with a developmental disability;

15 2. the name, age, address and relationship or interest of the peti-  
16 tioner to the person [~~who is intellectually disabled or a person who is~~  
17 ~~developmentally disabled~~] with a developmental disability;

18 3. the names and addresses, if known, of the father, the mother, adult  
19 children, adult siblings [~~if eighteen years of age or older,~~] and the  
20 spouse [~~and primary care physician if other than a physician having~~  
21 ~~submitted a certification with the petition, if any,~~] of the person [~~who~~  
22 ~~is intellectually disabled or a person who is developmentally disabled~~]  
23 with a developmental disability and whether or not they are living, and  
24 if living, their addresses and the names and addresses of the nearest  
25 distributees of full age who are domiciliaries, if both parents are  
26 dead;

27 4. the name and address of the person [~~with whom the person who is~~  
28 ~~intellectually disabled or a~~] caring for the person [~~who is develop-~~  
29 ~~mentally disabled~~] with a developmental disability, or with whom the  
30 person with a developmental disability resides if other than the parents  
31 or spouse;

32 5. the name and address of any person with significant and ongoing  
33 involvement in the life of the person with a developmental disability so  
34 as to have sufficient knowledge of their needs, if such persons are  
35 known to the petitioner;

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

42 [~~6.~~] 7. the estimated value of real and personal property and the  
43 annual income therefrom and any other income including governmental  
44 entitlements to which the person [~~who is intellectually disabled or~~  
45 ~~person who is developmentally disabled~~] with a developmental disability  
46 is entitled; [~~and~~

47 ~~7. any circumstances which the court should consider in determining~~  
48 ~~whether it is in the best interests of the person who is intellectually~~  
49 ~~disabled or person who is developmentally disabled to not be present at~~  
50 ~~the hearing if conducted.]~~

51 8. factual allegations forming the basis for the petition, including  
52 facts relating to the person's functional limitations which impair his  
53 or her ability to provide for personal and/or property management needs,  
54 and the person's lack of understanding and appreciation of the nature  
55 and consequences of his or her functional limitations;

1 9. the particular powers being sought under their relationship to the  
2 functional level and needs of the person with a developmental disabili-  
3 ty;

4 10. an enumeration of the specific domains in which the person with a  
5 developmental disability is alleged to be in need of a guardian or a  
6 statement that full guardianship is sought. Specific domains may be  
7 included which may include:

8 (i) consent to or refusal to consent to health care or other profes-  
9 sional care;

10 (ii) management of money or other income, assets or property;

11 (iii) access to confidential and other sensitive information;

12 (iv) choices involving education, training, employment, supports and  
13 services;

14 (v) requesting advocacy, legal or other professional services;

15 (vi) choice of residence and shared living arrangements;

16 (vii) choices as to social and recreational activity;

17 (viii) decisions concerning travel; and

18 (ix) application for government-sponsored or private insurance and  
19 benefits; and

20 11. a statement of the alternatives to guardianship considered,  
21 including but not limited to the execution of a health care proxy, power  
22 of attorney, representative payee, service coordination, and/or other  
23 social support services, other available supported or shared decision-  
24 making, and surrogate decision-making committee, and reasons for the  
25 declination of such alternatives.

26 § 7. Section 1753 of the surrogate's court procedure act, as amended  
27 by chapter 198 of the laws of 2016, is amended to read as follows:

28 § 1753. Persons to be served and noticed

29 1. Upon ~~presentation~~ filing of the petition, process shall issue  
30 to~~+~~

31 ~~(a) the parent or parents, adult children, if the petitioner is other~~  
32 ~~than a parent, adult siblings, if the petitioner is other than a parent,~~  
33 ~~and if the person who is intellectually disabled or person who is devel-~~  
34 ~~opmentally disabled is married, to the spouse, if their residences are~~  
35 ~~known;~~

36 ~~(b) the person having care and custody of the person who is intellec-~~  
37 ~~tually disabled or person who is developmentally disabled, or with whom~~  
38 ~~such person resides if other than the parents or spouse; and~~

39 ~~(c) the person who is intellectually disabled or person who is devel-~~  
40 ~~opmentally disabled if fourteen years of age or older for whom an appli-~~  
41 ~~cation has been made in such person's behalf.~~

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

44 ~~(a) the adult siblings if the petitioner is a parent, and adult chil-~~  
45 ~~dren if the petitioner is a parent;~~

46 ~~(b) the mental hygiene legal service in the judicial department where~~  
47 ~~the facility, as defined in subdivision (a) of section 47.01 of the~~  
48 ~~mental hygiene law, is located if the person who is intellectually disa-~~  
49 ~~bled or person who is developmentally disabled resides in such a facili-~~  
50 ~~ty;~~

51 ~~(c) in all cases, to the director in charge of a facility licensed or~~  
52 ~~operated by an agency of the state of New York, if the person who is~~  
53 ~~intellectually disabled or person who is developmentally disabled~~  
54 ~~resides in such facility;~~

55 ~~(d) one other person if designated in writing by the person who is~~  
56 ~~intellectually disabled or person who is developmentally disabled; and~~

1 ~~(e) such other persons as the court may deem proper~~ ] the person with a  
 2 developmental disability, if the petitioner is other than the person  
 3 with a developmental disability alleged to be in need of a guardian. Any  
 4 process served upon the person with a developmental disability shall be  
 5 accompanied by a simplified, clear and easily readable form statement,  
 6 developed by the office of court administration, including the right of  
 7 the person to contest the appointment of the guardian to be present at  
 8 hearings related to the proceeding, to be represented by an attorney and  
 9 a statement about the nature and implications of the proceedings.

10 2. Upon filing of the petition, notice of the petition shall be sent  
 11 by certified mail to the last known address of the following, except if  
 12 any of the following is also the petitioner:

13 (a) parents, spouse, adult children, and adult siblings of the person  
 14 alleged to be in need of the guardian;

15 (b) individuals listed in the petition pursuant to section seventeen  
 16 hundred fifty-two of this article and subdivisions four and five of this  
 17 section;

18 (c) mental hygiene legal service in the judicial department where the  
 19 person with a developmental disability resides;

20 (d) the director in charge of a facility licensed or operated by an  
 21 agency of the state of New York, if the person with a developmental  
 22 disability resides in such facility;

23 (e) any other person if designated in writing by the person with a  
 24 developmental disability; and

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

26 3. Within five days of the filing of the petition, a full copy of said  
 27 petition shall be served by certified mail to the mental hygiene legal  
 28 service in the judicial department in which the petition was filed. A  
 29 copy of proof of mailing shall be thereafter filed with the court.

30 4. For petitions to modify an existing guardianship pursuant to  
 31 section seventeen hundred fifty-five of this article and/or to appoint a  
 32 standby guardian pursuant to section seventeen hundred fifty-seven of  
 33 this article, written notice must be given to all standby guardians  
 34 currently in succession for a person with a developmental disability who  
 35 is the subject of the petition by regular mail unless such standby guar-  
 36 dians have consented to the petition. An affidavit of service by mail  
 37 shall be filed with the court. A copy of such petition to modify shall  
 38 also be served by certified mail upon the mental hygiene legal service  
 39 in the judicial department in which the petition was filed.

40 ~~[3.]~~ 5. No process or notice shall be necessary to [a parent, adult  
 41 child, adult sibling, or spouse of the person who is intellectually  
 42 disabled or person who is developmentally disabled who has been declared  
 43 by a court as being incompetent. In addition, no process or notice shall  
 44 be necessary to a spouse who is divorced from the person who is intel-  
 45 lectually disabled or person who is developmentally disabled, and to] a  
 46 parent, adult child, or adult sibling when it shall appear to the satis-  
 47 faction of the court, based on evidence submitted to the court, that  
 48 such person or persons have abandoned the person who ~~[is intellectually~~  
 49 ~~disabled or person who is developmentally disabled]~~ has a developmental  
 50 disability. In addition, no process or notice shall be necessary to any  
 51 individual who cannot, after due diligence, reasonably be located. The  
 52 petitioner shall submit an affidavit to such effect.

53 § 8. Section 1754 of the surrogate's court procedure act, as amended  
 54 by chapter 198 of the laws of 2016, is amended to read as follows:

55 § 1754. ~~[Hearing and trial]~~ Proceedings upon petition

1 1. Upon a petition for the appointment of a guardian of a person [~~who~~  
2 ~~is intellectually disabled or person who is developmentally disabled~~]  
3 with a developmental disability eighteen years of age or older, the  
4 court shall [~~conduct a hearing at which such person shall have the right~~  
5 ~~to jury trial. The right to a jury trial shall be deemed waived by fail-~~  
6 ~~ure to make a demand therefor. The court may in its discretion dispense~~  
7 ~~with a hearing for the appointment of a guardian, and may in its~~  
8 ~~discretion appoint a guardian ad litem, or the mental hygiene legal~~  
9 ~~service if such person is a resident of a mental hygiene facility as~~  
10 ~~defined in subdivision (a) of section 47.01 of the mental hygiene law,~~  
11 ~~to recommend whether the appointment of a guardian as proposed in the~~  
12 ~~application is in the best interest of the person who is intellectually~~  
13 ~~disabled or person who is developmentally disabled, provided however,~~  
14 ~~that such application has been made by:~~

15 ~~(a) both parents or the survivor, or~~

16 ~~(b) one parent and the consent of the other parent, or~~

17 ~~(c) any interested party and the consent of each parent.], not later~~  
18 than forty-five days following the filing of proof of mailing upon the  
19 mental hygiene legal service, schedule an appearance in the matter.

20 (a) The mental hygiene legal service shall ascertain whether the  
21 person with a developmental disability alleged to need a guardian has  
22 any objection to the relief sought in the petition and whether the  
23 service is unable to represent the interests of the person in the  
24 proceeding due to conflict of interest.

25 (b) If the service reports that the person with a developmental disa-  
26 bility alleged to need a guardian objects to the relief sought in the  
27 petition, the court shall appoint the service as counsel for the person.  
28 If the service is not available to serve as the person's counsel and the  
29 person does not otherwise have counsel of his or her own choice, the  
30 court shall appoint counsel for the person from among attorneys eligible  
31 for such appointment pursuant to section thirty-five of the judiciary  
32 law. The court shall ensure that the individual's counsel, whether it  
33 be the service or appointed counsel, have demonstrated experience with  
34 and knowledge of representing individuals with developmental disabili-  
35 ties. The appointment of such counsel shall be at no cost to the peti-  
36 tioner.

37 (c) If the service reports that the person with a developmental disa-  
38 bility alleged to need a guardian does not object to relief sought in  
39 the petition, the person's interests shall continue to be represented by  
40 the service, if available. The service shall conduct an examination into  
41 the allegations of fact contained in the petition and file with the  
42 court and serve upon the petitioner or their counsel, no later than ten  
43 days prior to the appearance date, an answer confirming or denying the  
44 allegations in the petition and report as to whether the service finds  
45 grounds to object to the relief sought in the petition. If appropriate  
46 and upon consent of the person with a developmental disability, the  
47 service may nominate a person or entity of the respondent's choosing to  
48 serve as guardian. The service will otherwise perform its functions  
49 consistent with uniform regulations promulgated by the appellate divi-  
50 sion of the supreme court.

51 (d) If a person with a developmental disability alleged to need a  
52 guardian does not object and does not otherwise appear by the service or  
53 other counsel, the court shall appoint a guardian ad litem to such  
54 person pursuant to this section and section four hundred three of this  
55 act. Any guardian ad litem appointed pursuant to this section shall  
56 conduct an investigation into the allegations of fact contained in the

1 petition and file with the court and serve no later than ten days prior  
2 to the appearance date, a report of its findings confirming or discon-  
3 firming said allegations, and if appropriate and upon consent of the  
4 person with a developmental disability nominate a person or entity of  
5 the respondent's choosing to serve as guardian, as well as any other  
6 matter which could assist the court's consideration of the matter, and  
7 serve a copy of the report upon the petitioner upon consent of the  
8 person with the developmental disability.

9 (e) The service, any other counsel for the person with a developmental  
10 disability alleged to need a guardian, or the guardian ad litem may  
11 apply to the court for permission to inspect the clinical records  
12 pertaining to the person with a developmental disability alleged to need  
13 a guardian in accordance with state and federal laws. The service, any  
14 other counsel for the person with a developmental disability and the  
15 guardian ad litem, if any, shall be afforded access to the person's  
16 clinical records without a court order to the extent that such access is  
17 otherwise authorized by state and federal laws.

18 (f) The service, any other counsel for the person with a developmental  
19 disability alleged to need a guardian, and the guardian ad litem, if  
20 any, may request the court for further evaluation of the person by a  
21 physician, psychiatrist or certified psychologist. In the event that  
22 further evaluations are required, the court may grant appropriate  
23 adjournments of the initial appearance date and may direct, in the case  
24 of a person determined to be indigent, that any further court authorized  
25 evaluations be paid for out of funds available pursuant to section thir-  
26 ty-five of the judiciary law. Such evaluation shall be at no cost to  
27 the petitioner.

28 ~~2. [When it shall appear to the satisfaction of the court that a~~  
29 ~~parent or parents not joining in or consenting to the application have~~  
30 ~~abandoned the person who is intellectually disabled or person who is~~  
31 ~~developmentally disabled or are not otherwise required to receive~~  
32 ~~notice, the court may dispense with such parent's consent in determining~~  
33 ~~the need to conduct a hearing for a person under the age of eighteen.~~  
34 ~~However, if the consent of both parents or the surviving parent is~~  
35 ~~dispensed with by the court, a hearing shall be held on the application]~~  
36 At the first appearance, the respondent shall be present unless such  
37 presence is excused by the court upon recommendation of the service,  
38 respondent's counsel, or the guardian ad litem if the respondent does  
39 not have counsel and upon consent of the respondent. The petitioner  
40 shall also be present and may be represented by counsel. Any other party  
41 required to be served or noticed with process in the matter may be pres-  
42 ent.

43 (a) Prior to such appearance, the petitioner, either personally or by  
44 counsel, may confer with the service, respondent's counsel and the guar-  
45 dian ad litem if respondent does not have counsel and agree to amend any  
46 part of its petition and allegations of fact therein. Any such amended  
47 petition shall be filed with the court prior to the date of the first  
48 appearance.

49 (b) At the first appearance, the court shall examine the answer of the  
50 service, respondent's counsel, and the report of the guardian ad litem,  
51 if any, and shall hear from the petitioner and the service, respondent's  
52 counsel and the guardian ad litem, if any, on the contents of the said  
53 answer or report and any amended petition filed.

54 (c) The court may direct that an order and decree of guardianship be  
55 issued, including the authority of the guardian to act on behalf of the  
56 respondent with respect to any matter in which petitioner, the service,

1 respondent's counsel, and the guardian ad litem, if any, all agree on  
2 the record that the respondent requires the requested relief and does  
3 not object to such relief.

4 (d) In the event that the petition cannot be disposed of by the agree-  
5 ment of the court and all of the parties, the court shall forthwith  
6 schedule a hearing on the matter at which the respondent shall be pres-  
7 ent unless the court determines, based on clear and convincing evidence,  
8 that the respondent's presence is medically contraindicated, in that it  
9 would be likely to cause harm to the respondent, or that the respondent  
10 is completely unable to participate in the hearing or where no meaning-  
11 ful participation will result from the respondent's presence at the  
12 hearing. Provided, however, that the respondent's presence shall not be  
13 waived over the objection of the service, respondent's counsel, or a  
14 guardian ad litem, if any. If the respondent physically cannot come or  
15 be brought to the courthouse, or the court determines, based on clear  
16 and convincing evidence that the respondent's presence would be harmful  
17 to the respondent, the hearing must be conducted where the respondent  
18 resides.

19 ~~3. [If a hearing is conducted, the person who is intellectually disa-~~  
20 ~~bled or person who is developmentally disabled shall be present unless~~  
21 ~~it shall appear to the satisfaction of the court on the certification of~~  
22 ~~the certifying physician that the person who is intellectually disabled~~  
23 ~~or person who is developmentally disabled is medically incapable of~~  
24 ~~being present to the extent that attendance is likely to result in phys-~~  
25 ~~ical harm to such person who is intellectually disabled or person who is~~  
26 ~~developmentally disabled, or under such other circumstances which the~~  
27 ~~court finds would not be in the best interest of the person who is~~  
28 ~~intellectually disabled or person who is developmentally disabled]~~ If  
29 there are any objections to the relief sought by the petitioner, the  
30 respondent has a right to a hearing or jury trial, if demanded by the  
31 respondent. In addition, the court may conduct a hearing at the request  
32 of any party or on its own motion. At any such hearing or trial, the  
33 petitioner must establish by clear and convincing evidence any facts  
34 alleged in the petition or amended petition which are controverted and  
35 are relevant to whether respondent has a developmental disability, and  
36 if so, whether appointment of a guardian is required as provided under  
37 subdivision one of section seventeen hundred fifty of this article and  
38 the scope of the guardian's powers.

39 ~~4. [If either a hearing is dispensed with pursuant to subdivisions one~~  
40 ~~and two of this section or the person who is intellectually disabled or~~  
41 ~~person who is developmentally disabled is not present at the hearing~~  
42 ~~pursuant to subdivision three of this section, the court may appoint a~~  
43 ~~guardian ad litem if no mental hygiene legal service attorney is author-~~  
44 ~~ized to act on behalf of the person who is intellectually disabled or~~  
45 ~~person who is developmentally disabled. The guardian ad litem or mental~~  
46 ~~hygiene legal service attorney, if appointed, shall personally interview~~  
47 ~~the person who is intellectually disabled or person who is develop-~~  
48 ~~mentally disabled and shall submit a written report to the court.~~

49 ~~5. If, upon conclusion of such hearing or jury trial or if none be~~  
50 ~~held upon the application, the court is satisfied that the best inter-~~  
51 ~~ests of the person who is intellectually disabled or person who is~~  
52 ~~developmentally disabled will be promoted by the appointment of a guard-~~  
53 ~~ian of the person or property, or both, it shall make a decree naming~~  
54 ~~such person or persons to serve as such guardians.] If, upon conclusion~~  
55 of such hearing or jury trial, if any, the court is satisfied, based on  
56 the standard outlined in this section and in subdivision one of section

1 seventeen hundred fifty of this article that the respondent has a devel-  
2 opmental disability and requires the appointment of a guardian of the  
3 person or property, or both, it shall make a decree naming such person  
4 or persons to serve as such guardians. The court decree shall be  
5 designed to accomplish the least restrictive form of intervention by  
6 appointing a guardian with powers limited to those which the court has  
7 found necessary to assist the respondent in providing for personal needs  
8 and/or property management. The powers of the guardian shall be  
9 tailored to the needs of the respondent.

10 5. If the respondent is found to have agreed to the appointment of a  
11 guardian and the court determines that the appointment of a guardian is  
12 necessary, the court decree shall be designed to accomplish the least  
13 restrictive form of intervention by appointing a guardian with powers  
14 limited to those which the court has found necessary to assist the  
15 respondent in providing for personal needs and/or property management.  
16 The powers of the guardian shall be tailored to the needs of the  
17 respondent.

18 6. If the respondent is found to be a person with a developmental  
19 disability and the court determines that the appointment of a guardian  
20 is necessary, the court decree shall be designed to accomplish the least  
21 restrictive form of intervention by appointing a guardian with powers  
22 limited to those which the court has found necessary to assist the  
23 respondent in providing for personal needs and/or property management.  
24 The powers of the guardian shall be tailored to the needs of the  
25 respondent.

26 7. Where the court directs the appointment of a guardian pursuant to  
27 this section, the court shall make the following findings of fact on the  
28 record:

29 (a) the respondent's functional limitations which impair the respond-  
30 ent's ability to provide for personal and/or property management needs;

31 (b) the respondent's lack of understanding and appreciation of the  
32 nature and consequences of his or her functional limitations;

33 (c) the likelihood that the respondent will suffer harm because of the  
34 respondent's functional limitations and inability to adequately under-  
35 stand and appreciate the nature and consequences of such functional  
36 limitations;

37 (d) the necessity of the appointment of a guardian to prevent such  
38 harm;

39 (e) the specific powers of the guardian which constitute the least  
40 restrictive form of intervention consistent with the findings of this  
41 subdivision; and

42 (f) the duration of the appointment.

43 8. If the hearing is conducted without the respondent and the court  
44 appoints a guardian, the order of appointment shall set forth the factu-  
45 al basis for conducting the hearing without the presence of the respond-  
46 ent.

47 9. If the hearing is conducted in the presence of the respondent and  
48 the respondent is not represented by counsel, the court shall explain to  
49 the respondent, on the record, the purpose and possible consequences of  
50 the proceeding, the right to be represented by counsel of the respond-  
51 ent's own choice and the respondent's right to have counsel appointed if  
52 the respondent wishes to be represented by counsel and is unable to  
53 afford one, and shall inquire of the respondent whether he or she wishes  
54 to have an attorney appointed. If the respondent refuses the assistance  
55 of counsel, the court may nevertheless appoint counsel for the person  
56 from among the attorneys eligible for such appointment pursuant to

1 section thirty-five of the judiciary law, if the court is not satisfied  
2 that the respondent is capable of making an informed decision regarding  
3 the appointment of counsel. The appointment of such counsel shall be at  
4 no cost to the petitioner. The court shall ensure that the individual's  
5 counsel, whether it be the service or appointed counsel, has demon-  
6 strated experience with and knowledge of representing individuals with  
7 developmental disabilities.

8 10. The court shall direct that a decree be entered determining the  
9 rights of the parties.

10 11. The order and judgment must be entered and served within ten days  
11 of the signing of the order.

12 12. A copy of the order and decree shall be personally served upon and  
13 explained to the respondent in a manner which the respondent can reason-  
14 ably be expected to understand by the counsel for the person, or by the  
15 guardian or the guardian ad litem.

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

18 § 1754-a. Decision making standard

19 Decisions made by a guardian on behalf of a person with a develop-  
20 mental disability shall be made in accordance with the following stand-  
21 ards.

22 1. A guardian shall exercise authority only as necessitated by the  
23 person with a developmental disability's limitations, and, to the extent  
24 possible, shall encourage the person with a developmental disability to  
25 participate in decisions and to act on his or her own behalf.

26 2. A guardian shall consider the expressed desires and personal values  
27 of the person with a developmental disability to the extent known and  
28 shall afford the person with a developmental disability the greatest  
29 amount of independence and self-determination, when making decisions and  
30 shall consult with the person with a developmental disability whenever  
31 meaningful communication is possible.

32 3. If the person's wishes are unknown and remain unknown after reason-  
33 able efforts to discern them, the decision shall be made on the basis of  
34 the best interests of the person with a developmental disability as  
35 determined by the guardian. In determining the best interests of the  
36 person with a developmental disability, the guardian shall afford the  
37 person with a developmental disability the greatest amount of independ-  
38 ence and self-determination, and shall weigh the reason for and nature  
39 of the proposed action; the benefit or necessity of the action, the  
40 possible risks and other consequences of the proposed action; and any  
41 available alternatives and their risks, consequences and benefits. The  
42 guardian shall take into account any other information, including the  
43 views of family and friends, that the guardian believes the person with  
44 a developmental disability would have considered if able to act for  
45 himself or herself.

46 § 10. Section 1755 of the surrogate's court procedure act, as amended  
47 by chapter 198 of the laws of 2016, is amended to read as follows:

48 § 1755. Modification order

49 1. Any person [~~who is intellectually disabled or person who is devel-~~  
50 ~~opmentally disabled~~] with a developmental disability eighteen years of  
51 age or older, or any person on behalf of any person [~~who is intellectu-~~  
52 ~~ally disabled or person who is developmental disabled~~] with a develop-  
53 mental disability for whom a guardian has been appointed, may apply to  
54 the court [~~having jurisdiction over the guardianship order~~] pursuant to  
55 section seventeen hundred fifty-one-a of this article, requesting  
56 modification of such order in order to protect the [~~person who is intel-~~

1 ~~lectually disabled's, or person who is developmentally disabled's]~~  
2 person with a developmental disability's financial situation and/or his  
3 or her personal interests.

4 2. The court [~~may~~] shall, upon receipt of any such request to modify  
5 the guardianship order, appoint the mental hygiene legal service,  
6 assigned counsel, or a guardian ad litem, as provided in paragraphs (a)  
7 through (f) of subdivision one of section seventeen hundred fifty-four  
8 of this article. The court shall so modify the guardianship order if in  
9 its judgment the guardianship is no longer needed or the interests of  
10 the guardian are adverse to those of the person [~~who is intellectually~~  
11 ~~disabled or person who is developmentally disabled~~] with a developmental  
12 disability or if the interests of justice will be best served including,  
13 but not limited to, facts showing the necessity for protecting the  
14 personal and/or financial interests of the person [~~who is intellectually~~  
15 ~~disabled or person who is developmentally disabled~~] with a developmental  
16 disability.

17 3. To the extent that relief sought under this section would terminate  
18 the guardianship or restore certain powers to the person with a develop-  
19 mental disability, the burden of proof shall be on the person objecting  
20 to such relief. To the extent that relief sought under this section  
21 would further limit the powers of the person with a developmental disa-  
22 bility, the burden shall be on the person seeking such relief.

23 § 11. Section 1756 of the surrogate's court procedure act, as amended  
24 by chapter 198 of the laws of 2016, is amended to read as follows:

25 § 1756. Limited [~~guardian of the property~~] purpose and/or limited dura-  
26 tion guardianship

27 1. When it shall appear to the satisfaction of the court that such  
28 person [~~who is intellectually disabled or person who is developmentally~~  
29 ~~disabled~~] with a developmental disability for whom an application for  
30 guardianship is made is eighteen years of age or older and is wholly or  
31 substantially self-supporting by means of his or her wages or earnings  
32 from employment, the court is authorized and empowered to appoint a  
33 limited guardian of the property of such person [~~who is intellectually~~  
34 ~~disabled or person who is developmentally disabled~~] with a developmental  
35 disability who shall receive, manage, disburse and account for only such  
36 property of said person [~~who is intellectually disabled or person who is~~  
37 ~~developmentally disabled~~] with a developmental disability as shall be  
38 received from other than the wages or earnings of said person.

39 The person [~~who is intellectually disabled or person who is develop-~~  
40 ~~mentally disabled~~] with a developmental disability for whom a limited  
41 guardian of the property has been appointed shall have the right to  
42 receive and expend any and all wages or other earnings of his or her  
43 employment and shall have the power to contract or legally bind himself  
44 or herself for such sum of money not exceeding one month's wages or  
45 earnings from such employment or three hundred dollars, whichever is  
46 greater, or as otherwise authorized by the court.

47 2. When it shall appear to the satisfaction of the court, either upon  
48 a petition for guardianship filed as permitted by sections seventeen  
49 hundred fifty-one and seventeen hundred fifty-two of this article or  
50 upon a petition filed pursuant to this section in a simplified format to  
51 be established by the office of court administration in consultation  
52 with the office for people with developmental disabilities and other  
53 interested stakeholders, that a person with a developmental disability  
54 needs the assistance of a guardian of the person and/or property for the  
55 purpose of making a single decision or for a brief stated period of  
56 transition in such person's life, the court may appoint a limited-pur-

1 pose guardian of the person and/or property to effectuate such a deci-  
2 sion or transition. In any such case, the provisions of section seven-  
3 teen hundred fifty-four of this article shall apply, except that the  
4 period for the rendering of a report by the mental hygiene legal service  
5 or other respondent's counsel may be shortened as may be reasonably  
6 necessary to meet the needs of the respondent under the circumstances  
7 presented. An order appointing and empowering such a limited-purpose  
8 guardian of the person and/or property shall state specifically the  
9 duration and scope of such guardian's authority. The nature and dura-  
10 tion of the guardianship must bear a reasonable relation to the purpose  
11 for which the person is appointed a guardian.

12 § 12. Section 1757 of the surrogate's court procedure act, as amended  
13 by chapter 198 of the laws of 2016, is amended to read as follows:

14 § 1757. Standby guardian of a person [~~who is intellectually disabled or~~  
15 ~~person who is developmentally disabled~~] with a developmental  
16 disability

17 1. Upon application, a standby guardian of the person or property or  
18 both of a person [~~who is intellectually disabled or person who is devel-~~  
19 ~~opmentally disabled~~] with a developmental disability may be appointed by  
20 the court. Any such application shall be made upon notice to the mental  
21 hygiene legal service. The court may also, upon application, appoint an  
22 alternate and/or successive alternates to such standby guardian, to act  
23 if such standby guardian shall die, or become incapacitated, or shall  
24 renounce. Such appointments by the court shall be made in accordance  
25 with the provisions of this article.

26 2. Such standby guardian, or alternate in the event of such standby  
27 guardian's death, incapacity or renunciation, shall without further  
28 proceedings be empowered to assume the duties of his or her office imme-  
29 diately upon death, renunciation or adjudication of incompetency of the  
30 guardian or standby guardian appointed pursuant to this article, subject  
31 only to the filing of an application for confirmation of his or her  
32 appointment by the court within one hundred eighty days following  
33 assumption of his or her duties of such office. Before confirming the  
34 appointment of the standby guardian or alternate guardian, the court may  
35 conduct a hearing pursuant to section seventeen hundred fifty-four of  
36 this article upon petition by anyone on behalf of the person [~~who is~~  
37 ~~intellectually disabled or person who is developmentally disabled~~] with  
38 a developmental disability or the person [~~who is intellectually disabled~~  
39 ~~or person who is developmentally disabled~~] with a developmental disabil-  
40 ity if such person is eighteen years of age or older, or upon its  
41 discretion.

42 3. Failure of a standby or alternate standby guardian to assume the  
43 duties of guardian, seek court confirmation or to renounce the guardian-  
44 ship within sixty days of written notice by certified mail or personal  
45 delivery given by or on behalf of the person [~~who is intellectually~~  
46 ~~disabled or person who is developmentally disabled~~] with a developmental  
47 disability of a prior guardian's inability to serve and the standby or  
48 alternate standby guardian's duty to serve, seek court confirmation or  
49 renounce such role shall allow the court to:

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

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

1 order pursuant to section seventeen hundred fifty-five of this article  
2 is filed.

3 § 13. Subdivision 2 of section 1758 of the surrogate's court procedure  
4 act, as amended by chapter 198 of the laws of 2016, is amended to read  
5 as follows:

6 2. After the appointment of a guardian, standby guardian or alternate  
7 guardians, the court shall have and retain general jurisdiction over the  
8 person [~~who is intellectually disabled or person who is developmentally~~  
9 ~~disabled~~] with a developmental disability for whom such guardian shall  
10 have been appointed, to take of its own motion or to entertain and adju-  
11 dicate such steps and proceedings relating to such guardian, standby, or  
12 alternate guardianship as may be deemed necessary or proper for the  
13 welfare of such person [~~who is intellectually disabled or person who is~~  
14 ~~developmentally disabled~~] with a developmental disability.

15 § 14. Section 1759 of the surrogate's court procedure act, as amended  
16 by chapter 198 of the laws of 2016, is amended to read as follows:

17 § 1759. Duration of guardianship

18 1. Such guardianship shall not terminate at the age of majority or  
19 marriage of such person [~~who is intellectually disabled or person who is~~  
20 ~~developmentally disabled~~] with a developmental disability but shall  
21 continue during the life of such person, during the period specified in  
22 a limited purpose or limited duration guardianship, or until terminated  
23 by the court.

24 2. A person eighteen years or older for whom such a guardian has been  
25 previously appointed or anyone, including the guardian, on behalf of a  
26 person [~~who is intellectually disabled or person who is developmentally~~  
27 ~~disabled~~] with a developmental disability for whom a guardian has been  
28 appointed may petition the court which made such appointment or the  
29 court in his or her county of residence to have the guardian discharged  
30 and a successor appointed, or to have the guardian of the property  
31 designated as a limited guardian of the property, or to have the guardi-  
32 anship order modified, dissolved or otherwise amended. Upon such a peti-  
33 tion for review, the court shall conduct a hearing pursuant to section  
34 seventeen hundred fifty-four of this article, and shall apply all appli-  
35 cable standards outlined in this article, including those outlined in  
36 sections seventeen hundred fifty, seventeen hundred fifty-five, seven-  
37 teen hundred fifty-six and seventeen hundred fifty-seven of this  
38 article.

39 3. Upon marriage of such person [~~who is intellectually disabled or~~  
40 ~~person who is developmentally disabled~~] with a developmental disability  
41 for whom such a guardian has been appointed, the court shall, upon  
42 request of the person [~~who is intellectually disabled or person who is~~  
43 ~~developmentally disabled~~] with a developmental disability, spouse, or  
44 any other person acting on behalf of the person [~~who is intellectually~~  
45 ~~disabled or person who is developmentally disabled~~] with a developmental  
46 disability, review the need, if any, to modify, dissolve or otherwise  
47 amend the guardianship order including, but not limited to, the appoint-  
48 ment of the spouse as standby guardian. The court, in its discretion,  
49 may conduct such review pursuant to [~~section~~] the standards laid out in  
50 sections seventeen hundred fifty, seventeen hundred fifty-four, seventeen  
51 hundred fifty-five, seventeen hundred fifty-six and seventeen hundred  
52 fifty seven of this article.

53 § 15. Section 1760 of the surrogate's court procedure act, as amended  
54 by chapter 198 of the laws of 2016, is amended to read as follows:

55 § 1760. Corporate guardianship

1 No corporation may be appointed guardian of the person under the  
2 provisions of this article, except that a non-profit corporation organ-  
3 ized and existing under the laws of the state of New York and having the  
4 corporate power to act as guardian of a person [~~who is intellectually~~  
5 ~~disabled or person who is developmentally disabled~~] with a developmental  
6 disability may be appointed as the guardian of the person only of such  
7 person [~~who is intellectually disabled or person who is developmentally~~  
8 ~~disabled~~] with a developmental disability.

9 § 16. Section 1761 of the surrogate's court procedure act, as amended  
10 by chapter 198 of the laws of 2016, is amended to read as follows:

11 § 1761. Application of other provisions

12 To the extent that the context thereof shall admit, the provisions of  
13 article seventeen of this act shall apply to all proceedings under this  
14 article with the same force and effect as if an "infant", as therein  
15 referred to, were a "person [~~who is intellectually disabled" or "person~~  
16 ~~who is developmentally disabled"~~] with a developmental disability" as  
17 herein defined, and a "guardian" as therein referred to were a "guardian  
18 of the person [~~who is intellectually disabled or a "guardian of a person~~  
19 ~~who is developmentally disabled"~~] with a developmental disability" as  
20 herein provided for.

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

23 § 1762. Annual report of personal needs guardian

24 1. For the purposes of this article, the guardian of a person with a  
25 developmental disability shall submit a simplified report regarding the  
26 status of the person with a developmental disability annually on the  
27 anniversary of his or her appointment or at such other interval as  
28 ordered by the court.

29 2. The simplified report shall be on a form prescribed by the office  
30 of court administration and shall be reviewed by the court.

31 3. A corporate guardian appointed pursuant to section seventeen  
32 hundred sixty of this article may submit in lieu of the form prescribed  
33 by the office of court administration in subdivision two of this section  
34 its own internal report provided the information required by the office  
35 of court administration to be contained in the report is included in the  
36 corporate annual report.

37 4. The guardianship report form shall be filed with the court and  
38 mailed to standby guardians and alternate standby guardians, and, where  
39 applicable, the director of mental hygiene legal service in the depart-  
40 ment in which the person with a developmental disability resides and the  
41 director of the residence of the person with a developmental disability  
42 or the person with whom the person with a developmental disability  
43 resides.

44 § 18. Paragraph a of subdivision 1 of section 35 of the judiciary  
45 law, as amended by chapter 817 of the laws of 1986, is amended to read  
46 as follows:

47 a. When a court orders a hearing in a proceeding upon a writ of habeas  
48 corpus to inquire into the cause of detention of a person in custody in  
49 a state institution, or when it orders a hearing in a civil proceeding  
50 to commit or transfer a person to or retain him in a state institution  
51 when such person is alleged to be mentally ill, mentally defective or a  
52 narcotic addict, or when it orders a hearing for the commitment of the  
53 guardianship and custody of a child to an authorized agency by reason of  
54 the mental illness or [~~mental retardation~~] developmental disability of a  
55 parent, or when it orders a hearing for guardianship under article  
56 seventeen-A of the surrogate's court procedure act, or when it orders a

1 hearing to determine whether consent to the adoption of a child shall be  
2 required of a parent who is alleged to be mentally ill or [~~mentally~~  
3 ~~retarded~~] have a developmental disability, or when it orders a hearing  
4 to determine the best interests of a child when the parent of the child  
5 revokes a consent to the adoption of such child and such revocation is  
6 opposed or in any adoption or custody proceeding if it determines that  
7 assignment of counsel in such cases is mandated by the constitution of  
8 this state or of the United States, the court may assign counsel to  
9 represent such person if it is satisfied that he is financially unable  
10 to obtain counsel. Upon an appeal taken from an order entered in any  
11 such proceeding, the appellate court may assign counsel to represent  
12 such person upon the appeal if it is satisfied that he is financially  
13 unable to obtain counsel.

14 § 19. Subdivision 4 of section 35 of the judiciary law, as amended by  
15 chapter 706 of the laws of 1975 and as renumbered by chapter 315 of the  
16 laws of 1985, is amended to read as follows:

17 4. In any proceeding described in paragraph (a) of subdivision one of  
18 this section, when a person is alleged to be a person with a develop-  
19 mental disability in need of a guardian pursuant to article seventeen-A  
20 of the surrogate's court procedure act, be mentally ill, mentally defec-  
21 tive or a narcotic addict, the court which ordered the hearing may  
22 appoint no more than two psychiatrists, certified psychologists or  
23 physicians to examine and testify at the hearing upon the condition of  
24 such person. A psychiatrist, psychologist or physician so appointed  
25 shall, upon completion of his services, receive reimbursement for  
26 expenses reasonably incurred and reasonable compensation for such  
27 services, to be fixed by the court. Such compensation shall not exceed  
28 two hundred dollars if one psychiatrist, psychologist or physician is  
29 appointed, or an aggregate sum of three hundred dollars if two psychia-  
30 trists, psychologists or physicians are appointed, except that in  
31 extraordinary circumstances the court may provide for compensation in  
32 excess of the foregoing limits.

33 § 20. This act shall take effect on the one hundred eightieth day  
34 after it shall have become a law.