STATE OF NEW YORK

5842

2017-2018 Regular Sessions

IN SENATE

May 2, 2017

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

AN ACT to amend the surrogate's court procedure act and the judiciary law, in relation to guardianship and health care decisions of persons with developmental disabilities; and to repeal certain provisions 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:

Section 1. Section 1750 of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, is amended to read as follows:

§ 1750. Guardianship of persons [~~who are intellectually disabled~~] **with developmental disabilities**

1. When it shall appear to the satisfaction of the court that a person is a person [~~who is intellectually disabled~~] **with a developmental disability within the meaning of subdivision twenty-two of section 1.03 of the mental hygiene law or a person with traumatic brain injury within the meaning of subdivision one of section two thousand seven hundred forty-one of the public health law, except that no age of origination shall apply for purposes of this article to a person with traumatic head injury, and that such person, as a result of such developmental disability or traumatic brain injury, exhibits significant impairment of general or specific areas of intellectual functioning and/or adaptive behaviors in specified domains as enumerated in subdivision eight of section seventeen hundred fifty-two of this article**, the court is authorized to appoint a guardian of the person or of the property or of both if such appointment of a guardian or guardians is in the best interest of the person [~~who is intellectually disabled~~]. Such appointment shall be made pursuant to the provisions of this article[~~, provided however that the provisions of section seventeen hundred fifty-a of this article shall~~

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

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~~not apply to the appointment of a guardian or guardians of a person who is intellectually disabled.~~

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

2. Every guardianship entered into pursuant to this article prior to the effective date of this subdivision, including orders and decrees pursuant to section seventeen hundred fifty-seven of this article, shall remain in full force and effect thereafter, except as amended pursuant to section seventeen hundred fifty-five of this article or as ordered by the court; and any such guardianship shall be administered consistent with the substantive and procedural requirements set forth in this article, except that the provisions of section seventeen hundred six-two of this article shall only apply to guardianships entered into on or after the effective date of this subdivision. Further, guardianships entered into prior to the effective date of the chapter of the laws of two thousand seventeen which amended this subdivision, upon petition for amendment pursuant to section seventeen hundred fifty-five and section seventeen hundred fifty-seven of this article, shall not be required to resubmit proof of the continued need for guardianship.

3. Every [~~such certification pursuant to subdivision one of this section,~~] order and decree made on or after the effective date of this subdivision, shall include a specific determination by [~~such physician and psychologist, or by such physicians,~~] the issuing court as to whether the person [~~who is intellectually disabled~~] has the capacity to make health care decisions, as defined by subdivision three of section twenty-nine hundred eighty of the public health law, for himself or herself. A determination that the person [~~who is intellectually disabled~~] has the capacity to make health care decisions shall not preclude the appointment of a guardian pursuant to this section to make other decisions on behalf of the person [~~who is intellectually disabled~~]. The absence of this determination in the case of guardians appointed prior to [~~the effective date of this subdivision~~] March sixteenth, two thousand three shall not preclude such guardians from making health care decisions. Further, guardians appointed by orders and/or decrees issued prior to the effective date of the chapter of the laws of two thousand seventeen which amended this subdivision shall have authority in all areas, unless otherwise stated in said order or decree.

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

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

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

1. Scope of authority. As used in this section, the term "developmental disability" is as defined by subdivision twenty-two of section 1.03 of the mental hygiene law and shall also include individuals with traumatic brain injury as defined by subdivision one of section two thousand seven hundred forty-one of the public health law. Unless specifically prohibited by the court after consideration of [~~the deter-~~

~~mination, if any, regarding a person who is intellectually disabled's~~] a person with a developmental disability's capacity to make health care decisions, which is required by section seventeen hundred fifty of this article, the guardian of such person appointed pursuant to section seventeen hundred fifty of this article shall have the authority to make any and all health care decisions, as defined by subdivision six of section twenty-nine hundred eighty of the public health law, on behalf of the person [~~who is intellectually disabled~~] with a developmental disability, that such person could make if such person had capacity. Such decisions may include decisions to withhold or withdraw life-sustaining treatment. For purposes of this section, "life-sustaining treatment" means medical treatment, including cardiopulmonary resuscitation and nutrition and hydration provided by means of medical treatment, which is sustaining life functions and without which, according to reasonable medical judgment, the patient will die within a relatively short time period. Cardiopulmonary resuscitation is presumed to be life-sustaining treatment without the necessity of a medical judgment by an attending physician. The provisions of this article are not intended to permit or promote suicide, assisted suicide or euthanasia; accordingly, nothing in this section shall be construed to permit a guardian to consent to any act or omission to which the person [~~who is intellectually disabled~~] with a developmental disability could not consent if such person had capacity.

(a) For the purposes of making a decision to withhold or withdraw life-sustaining treatment pursuant to this section, in the case of a person for whom no guardian has been appointed pursuant to [~~section seventeen hundred fifty or seventeen hundred fifty-a of~~] this article, a "guardian" shall also mean a family member of a person who [~~(i) has intellectual disability, or (ii)~~] has a developmental disability, as defined in [~~section 1.03 of the mental hygiene law, which (A) includes intellectual disability, or (B) results in a similar impairment of general intellectual functioning or adaptive behavior so that such person is incapable of managing himself or herself, and/or his or her affairs by reason of such developmental disability~~] this subdivision and that such person, as a result of such developmental disability, exhibits significant impairment of general or specific areas of intellectual functioning and/or adaptive behaviors in specified domains as enumerated in subdivision eight of section seventeen hundred fifty-two of this article. Qualified family members shall be included in a prioritized list of said family members pursuant to regulations established by the commissioner of the office 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 deci-

sion of a guardian to withhold or withdraw life-sustaining treatment pursuant to this section.

In the case of a person for whom no guardian has been appointed pursuant to this article or for whom there is no qualified family member or the Willowbrook consumer advisory board available to make such a decision, a "guardian" shall also mean, notwithstanding the definitions in section 80.03 of the mental hygiene law, a surrogate decision-making committee, as defined in article eighty of the mental hygiene law. All declarations and procedures, including expedited procedures, to comply with this section shall be established by regulations promulgated by the [~~commission on quality of care and advocacy for persons with disabilities~~] **justice center for the protection of people with special needs, as established by article twenty of the executive law**.

(b) Regulations establishing the prioritized list of qualified family members required by paragraph (a) of this subdivision shall be developed by the commissioner of the office for people with developmental disabilities in conjunction with parents, advocates and family members of persons [~~who are intellectually disabled~~] **with developmental disabilities**. Regulations to implement the authority of the Willowbrook consumer advisory board pursuant to paragraph (a) of this subdivision may be promulgated by the commissioner of the office 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 person [~~who is intellectually disabled~~] **with a developmental disability** and, when reasonably known or ascertainable with reasonable diligence, on [~~the person who is intellectually disabled's~~] **such person's** wishes, including moral and religious beliefs.

(b) An assessment of the person [~~who is intellectually disabled's~~] **with a developmental disability's** best interests shall include consideration of:

(i) the dignity and uniqueness of every person;

(ii) the preservation, improvement or restoration of the person [~~who is intellectually disabled's~~] **with a developmental disability's** health **and well being**;

(iii) the relief of the person [~~who is intellectually disabled's~~] **with a developmental disability's** suffering by means of palliative care and pain management;

(iv) the unique nature of [~~artificially provided~~] nutrition or hydration **provided by medical treatment**, and the effect it may have on the person [~~who is intellectually disabled~~] **with a developmental disability**; and

(v) the entire medical condition of the person.

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

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

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

provided, however that the guardian shall have no financial obligation for the care of the person with developmental disabilities.

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

4. Life-sustaining treatment. The guardian shall have the affirmative obligation to advocate for the full and efficacious provision of health care, including life-sustaining treatment. In the event that a guardian makes a decision to withdraw or withhold life-sustaining treatment from a person [~~who is intellectually disabled~~] **with a developmental disability**:

(a) The attending physician, as defined in subdivision two of section twenty-nine hundred eighty of the public health law, must confirm to a reasonable degree of medical certainty that the person [~~who is intellectually disabled~~] **with a developmental disability** lacks capacity to make health care decisions. The determination thereof shall be included in the person [~~who is intellectually disabled's~~] **with a developmental disability's** medical record, and shall contain such attending physician's opinion regarding the cause and nature of the [~~person who is intellectually disabled's~~] **person's** incapacity as well as its extent and probable duration. The attending physician who makes the confirmation shall consult with another physician, or a [~~licensed~~] psychologist, to further confirm the [~~person who is intellectually disabled's~~] **person's** lack of capacity. The attending physician who makes the confirmation, or the physician or [~~licensed~~] psychologist with whom the attending physician consults, must (i) be employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law or employed by the office for people with developmental disabilities to provide treatment and care to people with developmental disabilities, or (ii) have been employed for a minimum of two years to render care and service in a facility or program operated, licensed or authorized by the office for people with developmental disabilities, or (iii) have been approved by the commissioner of the office for people with developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or licensed psychologist possess specialized training or three years experience in treating [~~intellectual disability~~] **people with developmental disabilities**. A record of such consultation shall be included in the person [~~who is intellectually disabled's~~] **with a developmental disability's** medical record.

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

(i) the person [~~who is intellectually disabled~~] has a medical condition as follows:

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

B. permanent unconsciousness; or

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

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

A. such person's medical condition, other than such person's [~~intellectual~~] **developmental** disability; and

B. the expected outcome of the life-sustaining treatment, notwithstanding such person's [~~intellectual~~] **developmental** disability; and

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

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

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

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

(i) in writing, dated and signed in the presence of one witness eighteen years of age or older who shall sign the decision, and presented to the attending physician, as defined in subdivision two of section twenty-nine hundred eighty of the public health law; or

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

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

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

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

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

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

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

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

C. have been approved by the commissioner of the office for people with developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or licensed psychologist possess specialized training or three

years experience in treating [~~intellectual disability~~] **persons with developmental disabilities**. A record of such consultation shall be included in the [~~person who is intellectually disabled's~~] **person's** medical record;

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

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

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

(i) the person [~~who is intellectually disabled~~] on whose behalf such decision was made; or

(ii) a parent or adult sibling who either resides with or has maintained substantial and continuous contact with the person [~~who is intellectually disabled~~]; or

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

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

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

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

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

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

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

(d) Dispute mediation. In the event of an objection pursuant to this subdivision, at the request of the objecting party or person or entity authorized to act as a guardian under this section, except a surrogate decision making committee established pursuant to article eighty of the mental hygiene law, such objection shall be referred to a dispute mediation system, established pursuant to section two thousand nine hundred seventy-two of the public health law or similar entity for mediating

disputes in a hospice, such as a patient's advocate's office, hospital chaplain's office or ethics committee, as described in writing and adopted by the governing authority of such hospice, for non-binding mediation. In the event that such dispute cannot be resolved within seventy-two hours or no such mediation entity exists or is reasonably available for mediation of a dispute, the objection shall proceed to judicial review pursuant to this subdivision. The party requesting mediation shall provide notification to those parties entitled to notice pursuant to paragraph (a) of this subdivision.

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

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

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

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

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

(c) Notwithstanding paragraph (a) of this subdivision, nothing in this section shall be construed to require an individual health care provider to honor a guardian's health care decision that the individual would not honor if the decision had been made by the person [~~who is intellectually disabled~~] **with a developmental disability**, if such person had capacity, because the decision is contrary to the individual's religious beliefs or sincerely held moral convictions, provided the individual health care provider promptly informs the guardian and the facility, if any, of his

or her refusal to honor the guardian's decision. In such event, the facility shall promptly transfer responsibility for the person [~~who is intellectually disabled~~] with a developmental disability to another individual health care provider willing to honor the guardian's decision. The individual health care provider shall cooperate in facilitating such transfer of the patient.

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

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

8. Immunity. (a) Provider immunity. No health care provider or employee thereof shall be subjected to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith a health care decision by a guardian, or for other actions taken reasonably and in good faith pursuant to this section.

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

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

§ 1751. Petition for appointment; by whom made

1. A petition for the appointment of a guardian [~~of the person or property, or both, of a person who is intellectually disabled or a person who is developmentally disabled may be made by a parent, any~~] pursuant to this article may be made by the person with a developmental disability or traumatic brain injury when such person is eighteen years of age or older, a parent, spouse, sibling, adult child or any other interested person eighteen years of age or older on behalf of the person [~~who is intellectually disabled or a person who is developmentally disabled~~] with a developmental disability or traumatic brain injury including a corporation authorized to serve as a guardian as provided for by this article[~~, or by the person who is intellectually disabled or a person who is developmentally disabled when such person is eighteen years of age or older~~].

2. A person with a developmental disability or traumatic brain injury may knowingly and voluntarily consent to the appointment of a guardian pursuant to this article.

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

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

1. A proceeding under this article shall be brought in the surrogate's court within the county in which the person with a developmental disability resides, or is physically present at the time the proceeding is commenced, subject to an application to change venue pursuant to this subdivision. If the person with a developmental disability alleged to be in need of a guardian is being cared for as a resident in a facility,

the residence of that person shall be deemed to be in the county where the facility is located and the proceeding may be brought in that county, subject to application by an interested party for a change in venue to another county because of the inconvenience of the parties or witnesses or the condition of the person alleged to be in need of a guardian.

2. After the appointment of a guardian, at the option of the petitioner, any proceeding to modify a prior order may be brought in the surrogate's court which granted the prior order, unless at the time of the application to modify the order the person with a developmental disability resides elsewhere, in which case the proceeding may be brought in the county where the person with a developmental disability resides or is physically present at the time the proceeding is commenced, without the need for a motion to transfer venue.

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

§ 1752. Petition for appointment; contents

The petition for the appointment of a guardian shall be filed with the court on forms to be prescribed by the state chief administrator of the courts. Such petition for a guardian [~~of a person who is intellectually disabled or a person who is developmentally disabled~~] pursuant to this article shall include, but not be limited to, the following information:

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

2. the name, age, address and relationship or interest of the petitioner to the person [~~who is intellectually disabled or a person who is developmentally disabled~~] with a developmental disability;

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

4. the name and address of the person with whom the person [~~who is intellectually disabled or a person who is developmentally disabled~~] with a developmental disability or traumatic brain injury resides if other than the parents or spouse;

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

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

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

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

8. An enumeration of the specific domains in which the person is alleged to be in need of a guardian or a statement that full guardianship is sought. Specific domains may include:

(a) informed consent health care or other professional care;

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

(c) access to confidential and other sensitive information;

(d) choices involving education, training, employment, supports and services;

(e) requesting advocacy, legal or other professional services;

(f) choice of residence and shared living arrangements;

(g) choices as to social and recreational activity;

(h) decisions concerning travel; and

(i) application for government-sponsored or private insurance and benefits.

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

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

§ 1753. Persons to be served and noticed

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

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

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

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

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

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

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

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

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

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

~~3. No process or notice shall be necessary to a parent, adult child, adult sibling, or spouse of the person who is intellectually disabled or person who is developmentally disabled who has been declared by a court as being incompetent. In addition, no process or notice shall be necessary to a spouse who is divorced from the person who is intellectually disabled or person who is developmentally disabled, and to a parent, adult child, adult sibling when it shall appear to the satisfaction of the court that such person or persons have abandoned the person who is intellectually disabled or person who is developmentally disabled.~~] the person with a developmental disability, if petitioner is other than the person with a developmental disability alleged to be in need of a guardian; and

(b) the parent or parents of the individual if the petitioner is other than the parents.

2. Upon filing of the petition, notice of the petition and the citation along with notice of the date, time, and location of the first appearance shall be sent by certified mail, return receipt requested to the last known address of the following, except if any of the following is also the petitioner:

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

(b) the director in charge of a facility licensed or operated by an agency of the state of New York or their designee, if the person with a developmental disability resides in such facility;

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

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

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

4. For petitions to modify an existing guardianship pursuant to section seventeen hundred fifty-five of this article and/or to appoint a standby or alternate standby guardian pursuant to subdivision seventeen hundred fifty-seven of this article, written notice must be given to all standby and alternate standby guardians currently in succession for a person with a developmental disability who is the subject of the petition by regular mail unless such standby and alternate standby guardians have consented to the petition. An affidavit of service by mail shall be filed with the court.

5. In addition, no process or notice shall be necessary to any individual who has evinced an intent to forgo his or her relationship to the individual as manifested by his or her failure to visit and communicate with the person alleged to be in need of guardianship, although able to do so and not prevented or discouraged from doing so. No process or notice shall be necessary for any individual who cannot, after due diligence, reasonably be located. The petitioner shall submit an affidavit to such effect.

§ 8. Section 1754 of the surrogate's court procedure act is REPEALED and a new section 1754 is added to read as follows:

§ 1754. Proceedings upon petition

1. Upon a petition for the appointment of a guardian of a person with a developmental disability eighteen years of age or older, the court shall not later than forty-five days following the filing of proof of

mailing upon the mental hygiene legal service, schedule an appearance in the matter.

(a) The mental hygiene legal service shall ascertain whether the person with a developmental disability alleged to need a guardian has any objection to the relief sought in the petition and whether the service is able to represent the interests of the person in the proceeding.

(b) If the mental hygiene service reports that the person with a developmental disability alleged to need a guardian objects to the relief sought in the petition, the court shall appoint the service as counsel for the person. If the service is not available to serve as the person's counsel and the person does not otherwise have counsel, the court shall appoint counsel for the person from among attorneys eligible for such appointment pursuant to section thirty-five of the judiciary law. The court shall ensure that the individual's counsel, whether it be the service or appointed counsel, have demonstrated experience with and knowledge of representing individuals with developmental disabilities. The appointment of such counsel shall be at no cost to the petitioners.

(c) If the mental hygiene legal service reports that the person with a developmental disability alleged to need a guardian does not object to relief sought in the petition, the person's interests shall continue to be represented by the service, if available, and the service shall conduct an examination into the allegations of fact contained in the petition and file with the court and serve upon the petitioner or their counsel no later than ten days prior to the appearance date an answer confirming or denying the allegations in the petition and report as to whether the service finds grounds to object to the relief sought in the petition. If the service objects to the relief sought in the petition, the service shall, along with its answer, serve a copy of its underlying report and findings upon the petitioner and/or their counsel. The service will otherwise perform its functions consistent with uniform regulations promulgated by the appellate division of the supreme court.

(d) If a person with a developmental disability alleged to need a guardian who does not object, does not otherwise appear by the service or other counsel, the court shall appoint a guardian ad litem pursuant to this section and section four hundred three of this act. Any guardian ad litem appointed pursuant to this section shall conduct an investigation into the allegations of fact contained in the petition and file with the court and serve no later than ten days prior to the appearance date, a report of its findings confirming or disconfirming said allegations, and if appropriate and upon consent of the person with a developmental disability nominate a person or entity of the respondent's choosing to serve as guardian, as well as any other matter which could assist the court's consideration of the matter, and serve a copy of the report upon the petitioner and petitioner's counsel. The court shall ensure that the individual's counsel, whether it be the service or appointed counsel, have demonstrated experience with and knowledge of representing individuals with developmental disabilities. The appointment of such guardian ad litem shall be at no cost to the petitioner.

(e) The mental hygiene legal service, any other counsel for the person with a developmental disability alleged to need a guardian, or the guardian ad litem may apply to the court for permission to inspect the clinical records pertaining to the person with a developmental disability alleged to need a guardian in accordance with state and federal laws. The service, any other counsel for the person with a developmental disability and the guardian ad litem, if any, shall be afforded access to

the person's clinical records without a court order to the extent that such access is otherwise authorized by state and federal laws.

(f) The petitioner, the mental hygiene legal service, any other counsel for the person with a developmental disability alleged to need a guardian, and the guardian ad litem, if any, may request the court for further evaluation of the person by a physician, psychiatrist or certified psychologist who has demonstrated experience with and knowledge of persons with developmental disabilities. In the event that further evaluations are required, the court may grant appropriate adjournments of the initial appearance date and may direct, in the case of a person determined to be indigent, that any further court authorized evaluations be paid for out of funds available pursuant to section thirty-five of the judiciary law. Such evaluation shall be at no cost to the petitioner.

2. At the first appearance, the respondent shall be present unless such presence is excused by the court based upon the standard set forth in paragraph (d) of this subdivision and upon recommendation of petitioner and/or petitioner's counsel, the mental hygiene legal service, respondent's counsel, or the guardian ad litem if the respondent does not have counsel. The petitioner shall also be present and may be represented by counsel. Any other party required to be served or noticed with process in the matter may be present.

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

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

(c) The court may direct that an order and decree of guardianship issue, including the authority of the guardian to act on behalf of the respondent with respect to any matter in which petitioner, the service, respondent's counsel, and the guardian ad litem, if any, all agree on the record that the respondent requires the requested relief and does not object to such relief.

(d) In the event that the petition cannot be disposed of by the agreement of the court and all of the parties, the court shall schedule a hearing in the matter within forty-five days of the first appearance at which the respondent shall be present unless it shall appear to the court that the respondent's presence is medically contraindicated, in that it would be likely to cause harm to the respondent, or under such other circumstances raised by or on behalf of the respondent as the court agrees that the respondent's presence would not be in his or her best interests, provided however that the respondent's presence shall not be waived over the objection of the service, respondent's counsel, or a guardian ad litem, if any, in which case the court shall conduct the hearing where the respondent resides, if the court is satisfied that the respondent's presence would be harmful to the respondent.

3. If there are any objections to the relief sought by the petitioner, the respondent has a right to a hearing or jury trial, if demanded by the respondent. In addition, the court may conduct a hearing at the request of any party or on its own motion. At any such hearing or trial,

the petitioner must establish by clear and convincing evidence any facts alleged in the petition or amended petition which are controverted and are relevant to whether respondent has a developmental disability, and if so, whether appointment of a guardian is required and the scope of the guardian's powers. Any other matter must be proven by the fair preponderance of the evidence presented and admitted.

4. If, upon conclusion of such hearing or jury trial, if any, the court is satisfied that the respondent has a developmental disability and requires the appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians. The powers of the guardian shall be tailored to the needs of the respondent.

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

§ 1754-a. Decision making standard

Decisions made by a guardian appointed pursuant to this article shall be made in accordance with the following standards:

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

2. A guardian shall consider the expressed desires and personal values of the person with a developmental disability to the extent known, when making decisions and shall consult with the person with a developmental disability whenever meaningful communication is possible.

3. If the person's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the best interests of the person with a developmental disability as determined by the guardian. In determining the best interests of the person with a developmental disability, the guardian shall weigh the reason for and nature of the proposed action; the benefit or necessity of the action, the possible risks and other consequences of the proposed action; and any available alternatives and their risks, consequences and benefits. The guardian shall take into account any other information, including the views of family and friends, that the guardian believes the person with a developmental disability would have considered if able to act for herself or himself.

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

§ 1755. Modification order

Any person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability eighteen years of age or older, or any person on behalf of any person [~~who is intellectually disabled or person who is developmental disabled~~] with a developmental disability for whom a guardian has been appointed, may apply to the court [~~having jurisdiction over the guardianship order~~] pursuant to section seventeen hundred fifty-one-a of this article requesting modification of such order in order to protect the person [~~who is intellectually disabled's, or person who is developmentally disabled's~~] with a developmental disability's financial situation and/or his or her personal interests. The court may, upon receipt of any such request to modify the guardianship order, appoint a guardian ad litem. Such guardian ad litem shall have demonstrated experience with and knowledge of persons with developmental disabilities. The court shall so modify the guardianship order if in its judgment the interests of the guardian are adverse to those of the person [~~who is intellectually disabled or person~~

~~who is developmentally disabled~~] with a developmental disability or if the interests of justice will be best served including, but not limited to, facts showing the necessity for protecting the personal and/or financial interests of the person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability.

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

§ 1756. Limited [~~guardian of the property~~] purpose and/or limited duration guardianship

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

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

2. When it shall appear to the satisfaction of the court, either upon a petition for guardianship filed as permitted by sections seventeen hundred fifty-one and seventeen hundred fifty-two of this article or upon a petition filed pursuant to this section in a simplified format to be established by the office of court administration in consultation with the office for people with developmental disabilities and other interested stakeholders, that a person with a developmental disability needs the assistance of a guardian of the person and/or property for the purpose of making a single decision or for a brief stated period of transition in such person's life, the court may appoint a limited-purpose guardian of the person and/or property to effectuate such a decision or transition. In any such case, the provisions of section seventeen hundred fifty-four of this article shall apply, except that the period for the rendering of a report by the mental hygiene legal service or other respondent's counsel may be shortened as may be reasonably necessary to meet the needs of the respondent under the circumstances presented. An order appointing and empowering such a limited-purpose guardian of the person and/or property shall state specifically the duration and scope of such guardian's authority.

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

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

1. Upon application, a standby guardian of the person or property or both of a person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability may be appointed by

the court. **Any such application shall be made upon notice to the mental hygiene legal service.** The court may also, upon application, appoint an alternate and/or successive alternates to such standby guardian, to act if such standby guardian shall die, or become incapacitated, or shall renounce. Such appointments by the court shall be made in accordance with the provisions of this article**, except that the court shall not require the petitioner to resubmit proof of the need for guardianship**.

2. Such standby guardian, or alternate in the event of such standby guardian's death, incapacity or renunciation, shall without further proceedings be empowered to assume the duties of his or her office immediately upon death, renunciation or adjudication of incompetency of the guardian or standby guardian appointed pursuant to this article, subject only to **the filing of an application for** confirmation of his or her appointment by the court within one hundred eighty days following assumption of his or her duties of such office. Before confirming the appointment of the standby guardian or alternate guardian, the court may conduct a hearing pursuant to section seventeen hundred fifty-four of this article upon petition by anyone on behalf of the person [~~who is intellectually disabled or person who is developmentally disabled~~] **with a developmental disability** or the person [~~who is intellectually disabled or person who is developmentally disabled~~] **with a developmental disability** if such person is eighteen years of age or older, or upon its discretion**, except that the court shall not require the petitioner to resubmit proof of the need for guardianship**.

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

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

(b) authorize, notwithstanding the time period provided for in subdivision two of this section to seek court confirmation, any remaining standby or alternate standby guardian to serve in such capacity provided (i) an application for confirmation and appropriate notices pursuant to subdivision one of section seventeen hundred fifty-three of this article are filed, or (ii) an application for modification of the guardianship order pursuant to section seventeen hundred fifty-five of this article is filed**, except that the court shall not require the petitioner to resubmit proof of the need for guardianship**.

§ 13. Section 1758 of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, is amended to read as follows:

§ 1758. Court jurisdiction

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

2. After the appointment of a guardian, standby guardian or alternate guardians, the court shall have and retain general jurisdiction over the person [~~who is intellectually disabled or person who is developmentally disabled~~] **with a developmental disability** for whom such guardian shall have been appointed, to take of its own motion or to entertain and adjudicate such steps and proceedings relating to such guardian, standby, or alternate guardianship as may be deemed necessary or proper for the

welfare of such person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability.

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

§ 1759. Duration of guardianship

1. Such guardianship shall not terminate at the age of majority or marriage of such person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability but shall continue during the life of such person, or until terminated by the court.

2. A person eighteen years or older for whom such a guardian has been previously appointed or anyone, including the guardian, on behalf of a person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability for whom a guardian has been appointed may petition the court which made such appointment or the court in his or her county of residence to have the guardian discharged and a successor appointed, or to have the guardian of the property designated as a limited guardian of the property, or to have the guardianship order modified, dissolved or otherwise amended. Upon such a petition for review, the court shall conduct a hearing pursuant to section seventeen hundred fifty-four of this article except that the court shall not require the petitioner to resubmit proof of the need for guardianship.

3. Upon marriage of such person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability for whom such a guardian has been appointed, the court shall, upon request of the person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability, spouse, or any other person acting on behalf of the person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability, review the need, if any, to modify, dissolve or otherwise amend the guardianship order including, but not limited to, the appointment of the spouse as standby guardian. The court, in its discretion, may conduct such review pursuant to section seventeen hundred fifty-four of this article except that the court shall not require the petitioner to resubmit proof of the need for guardianship.

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

§ 1760. Corporate guardianship

No corporation may be appointed guardian of the person under the provisions of this article, except that a non-profit corporation organized and existing under the laws of the state of New York and having the corporate power to act as guardian of a person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability, may be appointed as the guardian of the person only of such person [~~who is intellectually disabled or person who is developmentally disabled~~] with a developmental disability. Upon specific request to and approval by the court, such authority of a not-for-profit corporation as guardian of the person with developmental disabilities shall include the authority to establish a supplemental needs trust account for the benefit of the person with a developmental disability, if necessary.

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

§ 1761. Application of other provisions

To the extent that the context thereof shall admit, the provisions of article seventeen of this act shall apply to all proceedings under this

article with the same force and effect as if an "infant", as therein referred to, were a "person [~~who is intellectually disabled" or "person who is developmentally disabled~~] with a developmental disability" as herein defined, and a "guardian" as therein referred to were a "guardian of the person [~~who is intellectually disabled" or a "guardian of a person who is developmentally disabled~~] with a developmental disability" as herein provided for.

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

§ 1762. Annual account and asset verification form

1. A guardian of the property of a person with a developmental disability must, within the counties within the city of New York and within the counties of Nassau, Orange, Suffolk and Westchester, annually within thirty days after the anniversary of his or her appointment and within every other county in the month of January of each year, as long as any of the person with a developmental disability's property of the proceeds thereof remains under the guardian's control, file in the court the model guardianship account and asset verification form annexed hereto. A copy of the annual guardianship account and asset verification form is also to be sent by regular mail to all standby and alternate standby guardians then named in the court's decree to their last known address.

2. The model guardianship account and asset verification form shall be as follows:

GUARDIANSHIP ACCOUNT AND ASSET VERIFICATION FORM

*The original of this form is to be filed with the Surrogate Court Clerk where guardianship was originally obtained. A copy of this form is to be sent to all standby guardians and alternate standby guardians by regular mail.

I. Guardianship Data

GUARDIAN INFORMATION

_____

Guardian's Name

Home Phone #: _____

Mobile Phone #: _____

Work Phone#: _____

E-mail Address (if any): _____

_____

Street Address

_____

City State Zip

WARD INFORMATION

_____

Ward's Name & Date of Birth

_____

Street Address

_____

City State Zip

If the Ward lives in a residential facility or other setting under someone's care, please provide the following information:

Name/Address: _____

Contact Person: _____

Phone #: _____

E-mail Address (if any): _____

II. Guardianship Account and Asset Verification Form

Note: Absolutely NO WITHDRAWALS are permitted from a guardianship account without a prior written court order from the _____ County Surrogate's court.

Please have the financial institution complete this section if a Guardianship Account exists for the individual for whom you serve as guardian.
This is to certify that the records of (Name & Address of institution holding assets indicated herein) show that (Name & Address of Guardian), as Guardian of (Name of Ward) had a balance as of December 31, (insert year) of $(Insert amount) in Account # , which is in a Court Restricted Guardianship Account with this Financial Institution.
This account earned interest in the amount of $ in (year), as will be reported on the 1099 for this Account.
In witness whereof, the Financial Institution has hereunto set its hand and corporate seal the day and year noted herein.
By: _____
Official Title: _____
****
If you are not holding funds for your Ward, please sign below in the presence of a Notary Public.
I certify under penalty of perjury that I am not holding any funds in any financial institution or otherwise for my Ward, (Name of Ward).
Guardian Signature : _____
Print Name: _____
Sworn to and subscribed before me:
_____
Notary Public

§ 18. Paragraph a of subdivision 1 and subdivision 4 of section 35 of the judiciary law, paragraph a of subdivision 1 as amended by chapter 817 of the laws of 1986, subdivision 4 as amended by chapter 706 of the laws of 1975 and as renumbered by chapter 315 of the laws of 1985, are amended to read as follows:

a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of the guardianship and custody of a child to an authorized agency by reason of the mental illness or [~~mental retardation~~] **developmental disability** of a parent, **or when it orders a hearing for guardianship under article seventeen-a of the surrogate's court procedure act** or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or [~~mentally retarded~~] **have a developmental disability**, or when it orders a hearing to determine the best interests of a child when the parent of the child revokes a consent to the adoption of such child and such revocation is opposed or in any adoption or custody proceeding if it determines that assignment of counsel in such cases is mandated by the constitution of this state or of the United States, the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

4. In any proceeding described in paragraph (a) of subdivision one of this section, when a person is alleged to **be a person with a developmental disability or traumatic brain injury in need of a guardian pursuant to article seventeen-a of the surrogate's court procedure act,** be mentally ill, mentally defective or a narcotic addict, the court which

ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court. Such compensation shall not exceed two hundred dollars if one psychiatrist, psychologist or physician is appointed, or an aggregate sum of three hundred dollars if two psychiatrists, psychologists or physicians are appointed, except that in extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

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