

STATE OF NEW YORK

8301

2025-2026 Regular Sessions

IN ASSEMBLY

May 12, 2025

Introduced by M. of A. LAVINE -- (at request of the Unified Court System) -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to guardians of persons who are intellectually and developmentally disabled; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 1750 of the surrogate's court procedure act is REPEALED and a new section 1750 is added to read as follows:

§ 1750. Definitions

When used in this article:

1. "Developmental disability" shall mean a developmental disability within the meaning of subdivision twenty-two of section 1.03 of the mental hygiene law.

2. "Traumatic brain injury" shall mean an injury, as defined in section twenty-seven hundred forty-one of the public health law, which originated before the age of twenty-two.

3. "Respondent" shall mean an individual listed in the petition as alleged to have a developmental disability or traumatic brain injury, as defined in this section.

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

§ 1750-a. Guardianship of persons [~~who are developmentally disabled~~]
with a developmental disability or traumatic brain injury

1. When it shall appear to the satisfaction of the court [~~that a person is a person who is developmentally disabled, 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 developmentally disabled. Such appointments shall be made pursuant to the provisions of this article, provided however that the provisions of section seventeen hundred fifty of this article~~]

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

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~~shall not apply to the appointment of a guardian or guardians of a person who is developmentally disabled. For the purposes of this article, a person who is developmentally 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 developmental disabilities, having qualifications to make such certification, as having an impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing himself or herself and/or his or her affairs by reason of developmental disability and that such condition is permanent in nature or likely to continue indefinitely, and whose disability:~~

~~(a) is attributable to cerebral palsy, epilepsy, neurological impairment, autism or traumatic head injury;~~

~~(b) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with intellectual disabilities; or~~

~~(c) is attributable to dyslexia resulting from a disability described in subdivision one or two of this section or from intellectual disability; and~~

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

~~2. Notwithstanding any provision of law to the contrary, for the purposes of subdivision two of section seventeen hundred fifty and section seventeen hundred fifty b of this article, "a person who is intellectually disabled and his or her guardian" shall also mean a person and his or her guardian appointed pursuant to this section; provided that such person has been certified by the physicians and/or psychologists, specified in subdivision one of this section, as (i) having an intellectual disability, or (ii) having 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]~~ based on clear and convincing evidence that the respondent is a person with a developmental disability or traumatic brain injury, the court may appoint pursuant to the provisions of this article a guardian of the person or of the property or both provided that guardianship shall be imposed only if necessary and in the least restrictive manner specifically considering the respondent's functional abilities.

2. Every decree issued pursuant to this article shall include a finding as to whether the respondent has the capacity to make health care decisions, as defined by subdivision three of section twenty-nine hundred eighty of the public health law. A determination that the respondent has the capacity to make health care decisions shall not preclude the appointment of a guardian to make other decisions on behalf of the respondent.

§ 3. Section 1750-b of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, subparagraph (i) of paragraph (b) of subdivision 4 and paragraph (d) of subdivision 5 as amended by chapter 40 of the laws of 2024, is amended to read as follows:

§ 1750-b. Health care decisions for persons ~~[who are intellectually disabled]~~ with a developmental disability or traumatic brain injury

1. Scope of authority. Unless specifically prohibited by the court after consideration of the determination, if any, regarding ~~[a] the capacity of a person [who is intellectually disabled's capacity]~~ with a developmental disability or traumatic brain injury to make health care decisions, which is required by section seventeen hundred ~~[fifty]~~ fifty-a of this article, the guardian of such person appointed pursuant to section seventeen hundred ~~[fifty]~~ fifty-a 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 or traumatic brain injury 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 or traumatic brain injury 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]~~ a traumatic brain injury, 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]~~. 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

1 of the protections, procedures and safeguards which apply to the deci-
2 sion of a guardian to withhold or withdraw life-sustaining treatment
3 pursuant to this section.

4 In the case of a person for whom no guardian has been appointed pursu-
5 ant to this article or for whom there is no qualified family member or
6 the Willowbrook consumer advisory board available to make such a deci-
7 sion, a "guardian" shall also mean, notwithstanding the definitions in
8 section 80.03 of the mental hygiene law, a surrogate decision-making
9 committee, as defined in article eighty of the mental hygiene law. All
10 declarations and procedures, including expedited procedures, to comply
11 with this section shall be established by regulations promulgated by the
12 commission on quality of care and advocacy for persons with disabili-
13 ties.

14 (b) Regulations establishing the prioritized list of qualified family
15 members required by paragraph (a) of this subdivision shall be developed
16 by the commissioner of the office for people with developmental disabil-
17 ities in conjunction with parents, advocates and family members of
18 persons who are intellectually disabled. Regulations to implement the
19 authority of the Willowbrook consumer advisory board pursuant to para-
20 graph (a) of this subdivision may be promulgated by the commissioner of
21 the office for people with developmental disabilities with advice from
22 the Willowbrook consumer advisory board.

23 (c) Notwithstanding any provision of law to the contrary, the formal
24 determinations required pursuant to section seventeen hundred fifty of
25 this article shall only apply to guardians appointed pursuant to section
26 seventeen hundred fifty or seventeen hundred fifty-a of this article.

27 2. Decision-making standard. (a) The guardian shall base all advocacy
28 and health care decision-making solely and exclusively on the best
29 interests of the person [~~who is intellectually disabled~~] with a develop-
30 mental disability or traumatic brain injury and, when reasonably known
31 or ascertainable with reasonable diligence, on [~~the person who is intel-~~
32 ~~lectually disabled's~~] such person's wishes, including moral and reli-
33 gious beliefs.

34 (b) An assessment of [~~the person who is intellectually disabled's~~]
35 such person's best interests shall include consideration of:

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

37 (ii) the preservation, improvement or restoration of [~~the person who~~
38 ~~is intellectually disabled's~~] such person's health;

39 (iii) the relief of [~~the person who is intellectually disabled's~~] such
40 person's suffering by means of palliative care and pain management;

41 (iv) the unique nature of artificially provided nutrition or
42 hydration, and the effect it may have on [~~the~~] such person [~~who is~~
43 ~~intellectually disabled~~]; and

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

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

46 (i) a presumption that persons [~~who are intellectually disabled~~] with
47 a developmental disability or traumatic brain injury are not entitled to
48 the full and equal rights, equal protection, respect, medical care and
49 dignity afforded to persons without [~~an intellectual disability or~~] a
50 developmental disability or traumatic brain injury; or

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

53 3. Right to receive information. Subject to the provisions of sections
54 33.13 and 33.16 of the mental hygiene law, the guardian shall have the
55 right to receive all medical information and medical and clinical
56 records necessary to make informed decisions regarding the [~~person who~~

1 ~~is intellectually disabled's~~] health care of the person with a develop-
2 mental disability or traumatic brain injury.

3 4. Life-sustaining treatment. The guardian shall have the affirmative
4 obligation to advocate for the full and efficacious provision of health
5 care, including life-sustaining treatment. In the event that a guardian
6 makes a decision to withdraw or withhold life-sustaining treatment from
7 a person [~~who is intellectually disabled~~] with a developmental disabili-
8 ty or traumatic brain injury:

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

38 (b) The attending physician, as defined in subdivision two of section
39 twenty-nine hundred eighty of the public health law, with the concur-
40 rence of another physician with whom such attending physician shall
41 consult, must determine to a reasonable degree of medical certainty and
42 note on the [~~person who is intellectually disabled's~~] chart of the
43 person with a developmental disability or traumatic brain injury that:

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

46 A. a terminal condition, which for the purpose of this section means
47 an illness or injury from which there is no recovery, and which reason-
48 ably can be expected to cause death within one year; or

49 B. permanent unconsciousness; or

50 C. a medical condition other than such person's [~~intellectual~~] devel-
51 opmental disability or traumatic brain injury which requires life-sus-
52 taining treatment, is irreversible and which will continue indefinitely;
53 and

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

1 A. such person's medical condition, other than such person's [~~intel-~~
2 ~~lectual~~] developmental disability or traumatic brain injury; and

3 B. the expected outcome of the life-sustaining treatment, notwith-
4 standing such person's [~~intellectual~~] developmental disability or trau-
5 matic brain injury; and

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

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

9 B. the artificially provided nutrition or hydration poses an extraor-
10 dinary burden.

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

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

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

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

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

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

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

38 (i) the person [~~who is intellectually disabled~~] with a developmental
39 disability or traumatic brain injury, except if the attending physician
40 determines, in writing and in consultation with another physician or a
41 licensed psychologist, that, to a reasonable degree of medical certain-
42 ty, the person would suffer immediate and severe injury from such
43 notification. The attending physician who makes the confirmation, or the
44 physician or licensed psychologist with whom the attending physician
45 consults, shall:

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

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

53 C. have been approved by the commissioner of the office for people
54 with developmental disabilities in accordance with regulations promul-
55 gated by such commissioner. Such regulations shall require that a physi-
56 cian or licensed psychologist possess specialized training or three

1 years experience in treating intellectual disability. A record of such
2 consultation shall be included in the [~~person who is intellectually~~
3 ~~disabled's~~] medical record of the person with a developmental disability
4 or traumatic brain injury;

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

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

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

20 (i) the person [~~who is intellectually disabled~~] with a developmental
21 disability or traumatic brain injury on whose behalf such decision was
22 made; or

23 (ii) a parent or adult sibling who either resides with or has main-
24 tained substantial and continuous contact with the person [~~who is intel-~~
25 ~~lectually disabled~~] with a developmental disability or traumatic brain
26 injury; or

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

29 (iv) any other health care practitioner providing services to the
30 person [~~who is intellectually disabled~~] with a developmental disability
31 or traumatic brain injury, who is licensed pursuant to article one
32 hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two,
33 one hundred thirty-three, one hundred thirty-six, one hundred thirty-
34 nine, one hundred forty-one, one hundred forty-three, one hundred
35 forty-four, one hundred fifty-three, one hundred fifty-four, one hundred
36 fifty-six, one hundred fifty-nine or one hundred sixty-four of the
37 education law; or

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

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

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

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

48 (c) Notification. In the event of the suspension of a health care
49 decision pursuant to this subdivision, the objecting party shall prompt-
50 ly notify the guardian and the other parties identified in paragraph (a)
51 of this subdivision, and the attending physician shall record such
52 suspension in the [~~person who is intellectually disabled's~~] medical
53 chart of the person with a developmental disability or traumatic brain
54 injury.

55 (d) Dispute mediation. In the event of an objection pursuant to this
56 subdivision, at the request of the objecting party or person or entity

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

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

30 7. Provider's obligations. (a) A health care provider shall comply
31 with the health care decisions made by a guardian in good faith pursuant
32 to this section, to the same extent as if such decisions had been made
33 by the person ~~who is intellectually disabled~~ with a developmental
34 disability or traumatic brain injury, if such person had capacity.

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

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

47 (ii) the person ~~who is intellectually disabled~~ with a developmental
48 disability or traumatic brain injury is transferred promptly to another
49 hospital that is reasonably accessible under the circumstances and is
50 willing to honor the guardian's decision. If the guardian is unable or
51 unwilling to arrange such a transfer, the hospital's refusal to honor
52 the decision of the guardian shall constitute an objection pursuant to
53 subdivision five of this section.

54 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this
55 section shall be construed to require an individual health care provider
56 to honor a guardian's health care decision that the individual would not

1 honor if the decision had been made by the person [~~who is intellectually~~
2 ~~disabled~~] with a developmental disability or traumatic brain injury, if
3 such person had capacity, because the decision is contrary to the indi-
4 vidual's religious beliefs or sincerely held moral convictions, provided
5 the individual health care provider promptly informs the guardian and
6 the facility, if any, of [~~his or her~~] their refusal to honor the guardi-
7 an's decision. In such event, the facility shall promptly transfer
8 responsibility for the person [~~who is intellectually disabled~~] with a
9 developmental disability or traumatic brain injury to another individual
10 health care provider willing to honor the guardian's decision. The indi-
11 vidual health care provider shall cooperate in facilitating such trans-
12 fer of the patient.

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

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

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

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

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

37 § 1751. Petition for appointment; by whom made and where

38 1. A petition for the appointment of a guardian of the person or prop-
39 erty, or both, [~~of a person who is intellectually disabled or a person~~
40 ~~who is developmentally disabled~~] may be made by a parent ~~of a person~~
41 ~~asserted to have a developmental disability or traumatic brain injury~~,
42 any [~~interested~~] person eighteen years of age or older on behalf of the
43 ~~[person who is intellectually disabled or a person who is develop-~~
44 ~~mentally disabled]~~ respondent, including a corporation authorized to
45 serve as a guardian as provided for by this article, or by the person
46 who is [~~intellectually disabled or a person who is developmentally disa-~~
47 ~~bled]~~ asserted to have a developmental disability or traumatic brain
48 injury when such person is eighteen years of age or older.

49 2. A proceeding under this article shall be brought in the surrogate's
50 court within the county in which the respondent resides. If the respond-
51 ent is a resident in a residential facility, the residence of the
52 respondent shall be deemed to be in the county where that facility is
53 located.

54 § 5. Section 1752 of the surrogate's court procedure act, as amended
55 by chapter 198 of the laws of 2016 and subdivision 3 as amended by chap-
56 ter 420 of the laws of 2019, 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]~~ respondent 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]~~ respondent;

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]~~ respondent;

3. the names of the parents, 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]~~, if any, of the respondent, and whether or not they are living, and if living, their addresses and the names and addresses of the nearest ~~[distributees]~~ family members of full age who are domiciliaries, if both parents are ~~[dead]~~ deceased;

4. the name and address of the person with whom the ~~[person who is intellectually disabled or a person who is developmentally disabled]~~ respondent resides if other than the parents or spouse. If the respondent resides in a facility, the name and address of the facility;

5. the name, age, address, education and other qualifications, and consent of the proposed guardian, standby and alternate guardian~~[, if]~~. If petitioner is someone 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 or adult sibling be living, why any of them should not be appointed guardian;

6. 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]~~ respondent 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]~~ the respondent should not be present at the hearing ~~[if conducted]~~;

8. a statement that the respondent has a developmental disability or traumatic brain injury, including the basis for same, and the nature and extent of the respondent's functional abilities; and

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, care coordination and/or other social support services, or other supported or shared decision-making, and reasons for the declination of such alternatives.

§ 6. 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

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

(a) the spouse, the parent or parents, and adult children and adult siblings, 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]~~ providing care ~~[and custody of]~~ to the ~~[person who is intellectually disabled or person who is developmentally disabled]~~ respondent, 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]~~ respondent.

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]~~ respondent resides in such facility;

~~[(d) one other person]~~ (c) any other person or persons if designated in writing by the ~~[person who is intellectually disabled or person who is developmentally disabled]~~ respondent; and

~~[(e)]~~ (d) 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 court shall upon the issuance of a citation assign counsel for the respondent and shall provide said counsel with a copy of the petition and any supporting papers filed therein. Process or notice may be dispensed within the court's discretion.

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

§ 1754. Hearing and trial

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

~~(a) both parents or the survivor; or~~

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

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

~~2. When it shall appear to the satisfaction of the court that a parent or parents not joining in or consenting to the application have abandoned the person who is intellectually disabled or person who is developmentally disabled or are not otherwise required to receive notice, the court may dispense with such parent's consent in determining the need to conduct a hearing for a person under the age of eighteen. However, if the consent of both parents or the surviving parent is dispensed with by the court, a hearing shall be held on the application.~~

~~3. If a hearing is conducted, the person who is intellectually disabled or person who is developmentally disabled]~~

2. (a) The court shall appoint mental hygiene legal services as counsel for the respondent unless it appoints other counsel. The court may also appoint a guardian ad litem for the respondent. Such assignments of counsel or guardian ad litem shall be implemented as provided in section four hundred seven of this act.

(b) If the respondent objects to having counsel, the court may, despite such objection, exercise its discretion to appoint counsel or a guardian ad litem. The respondent may proceed self-represented only with leave of the court.

3. The respondent's counsel or the guardian ad litem may:

(a) apply to the court for an order permitting the applicant to inspect the clinical records pertaining to the respondent in accordance with state and federal laws; and

(b) be allowed access to the respondent's clinical records without a court order as otherwise permitted by law.

4. At the scheduled hearing, the respondent shall be present unless it shall appear to the satisfaction of the court [on the certification of the certifying physician that the person who is intellectually disabled or person who is developmentally disabled is medically incapable of being present to the extent that attendance is likely to result in physical harm to such person who is intellectually disabled or person who is developmentally disabled, or under such other circumstances which the court finds would not be in the best interest of the person who is intellectually disabled or person who is developmentally disabled.

~~4. If either a hearing is dispensed with pursuant to subdivisions one and two of this section or the person who is intellectually disabled or person who is developmentally disabled is not present at the hearing pursuant to subdivision three of this section, the court may appoint a guardian ad litem if no mental hygiene legal service attorney is authorized to act on behalf of the person who is intellectually disabled or person who is developmentally disabled. The guardian ad litem or mental hygiene legal service attorney, if appointed, shall personally interview the person who is intellectually disabled or person who is developmentally disabled and shall submit a written report to the court]~~ that the respondent's presence would result in harm to such person.

~~5. If, upon conclusion of [such hearing or jury trial or if none be held upon the application] the proceeding, the court is satisfied [that the best interests of the person who is intellectually disabled or person who is developmentally disabled will be promoted by the appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians]~~ based on clear and convincing evidence that the respondent is incapable of managing their affairs, it shall make a decree appointing a guardian provided that guardianship shall be imposed only if necessary and in the

1 least restrictive manner specifically considering the respondent's func-
2 tional abilities.

3 6. Where the court has determined that the respondent has certain
4 decision-making capacity, the court shall appropriately limit the scope
5 or duration of the guardianship it decrees.

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

8 § 1754-a. Decision-making standard

9 Decisions made by a guardian appointed hereunder shall be made in
10 accordance with the following standards:

11 1. A guardian shall exercise authority only as necessary and shall
12 encourage the person with a developmental disability or traumatic brain
13 injury to participate in making decisions and to act on their own
14 behalf.

15 2. When making decisions, a guardian shall consider the expressed
16 desires and personal values of the person with a developmental disabili-
17 ty or traumatic brain injury to the extent known, and shall consult such
18 person.

19 3. If the person's wishes are unknown and remain unknown after reason-
20 able efforts are made to discern them, the decision shall be made on the
21 basis of the best interests of such person as determined by the guardi-
22 an. In determining the best interests of such person, the guardian shall
23 weigh the reason for and nature of the proposed action; the benefit or
24 necessity of the action; the possible risks and other consequences of
25 the proposed action; and any available alternatives and their risks,
26 consequences and benefits. The guardian shall take into account any
27 other information, including the views of family and friends that the
28 guardian believes said person would have considered if able to act for
29 themselves.

30 § 9. Section 1755 of the surrogate's court procedure act is REPEALED
31 and a new section 1755 is added to read as follows:

32 § 1755. Duration, modification and revocation

33 1. A guardianship established under this article shall remain in
34 effect until modified or revoked by the court.

35 2. Any person for whom a guardian has been appointed pursuant to this
36 article, or anyone, including the guardian, on behalf of such person may
37 petition to the court to discharge the guardian and appoint a successor,
38 to designate the guardian of the property as a limited guardian of the
39 property, to appoint a spouse as stand-by guardian, or to otherwise
40 modify or revoke the guardianship order. Upon the filing of such a peti-
41 tion, the court shall conduct a hearing and such review pursuant to
42 section seventeen hundred fifty-four of this article. The court may
43 modify or revoke a decree if it determines that the circumstances or
44 needs of the person with a developmental disability or traumatic brain
45 injury have changed and the provisions of the decree are no longer
46 appropriate or necessary.

47 3. Any proceeding to modify or revoke a guardianship decree may be
48 commenced in the surrogate's court which issued the decree, unless at
49 the time of the petition to modify or revoke the decree the person with
50 a developmental disability or traumatic brain injury resides in a
51 different county, in which case the proceeding may be commenced in the
52 county where the person with a developmental disability or traumatic
53 brain injury resides.

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

56 § 1756. Limited guardian of the property

1 When it shall appear to the satisfaction of the court that [~~such~~
2 ~~person who is intellectually disabled or person who is developmentally~~
3 ~~disabled for whom an application for guardianship is made is eighteen~~
4 ~~years of age or older and~~] the respondent is wholly or substantially
5 self-supporting by means of [~~his or her~~] wages or earnings from employ-
6 ment, the court is authorized and empowered to appoint a limited guardi-
7 an of the property of [~~such person who is intellectually disabled or~~
8 ~~person who is developmentally disabled~~] the respondent who shall
9 receive, manage, disburse and account for only such property of said
10 person [~~who is intellectually disabled or person who is developmentally~~
11 ~~disabled~~] as shall be received from other than the wages or earnings of
12 said person.

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

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

23 § 1757. Standby guardian of a person [~~who is intellectually disabled or~~
24 ~~person who is developmentally disabled~~] with a developmental
25 disability or traumatic brain injury

26 1. Upon application, a standby guardian of the person or property or
27 both of a person [~~who is intellectually disabled or person who is devel-~~
28 ~~opmentally disabled~~] with a developmental disability or traumatic brain
29 injury may be appointed by the court. The court may also, upon applica-
30 tion, appoint an alternate and/or successive alternates to such standby
31 guardian, to act if such standby guardian shall die, or become incapaciti-
32 tated, or shall renounce. Such appointments by the court shall be made
33 in accordance with the provisions of this article.

34 2. Such standby guardian, or alternate in the event of such standby
35 guardian's death, incapacity or renunciation, shall without further
36 proceedings be empowered to assume the duties of [~~his or her~~] office
37 immediately upon death, renunciation or adjudication of incompetency of
38 the guardian or standby guardian appointed pursuant to this article,
39 subject only to confirmation of [~~his or her~~] the appointment by the
40 court within one hundred eighty days following assumption of [~~his or~~
41 ~~her~~] the standby or alternate guardian's duties of such office. Before
42 confirming the appointment of the standby guardian or alternate guardi-
43 an, the court may conduct a hearing pursuant to section seventeen
44 hundred fifty-four of this article upon petition by anyone on behalf of
45 the person [~~who is intellectually disabled or person who is develop-~~
46 ~~mentally disabled~~] with a developmental disability or traumatic brain
47 injury or the person [~~who is intellectually disabled or person who is~~
48 ~~developmentally disabled if such person is eighteen years of age or~~
49 ~~older~~] with a developmental disability or traumatic brain injury, or
50 upon its discretion.

51 3. Failure of a standby or alternate standby guardian to assume the
52 duties of guardian, seek court confirmation or to renounce the guardian-
53 ship within sixty days of written notice by certified mail or personal
54 delivery given by or on behalf of the person [~~who is intellectually~~
55 ~~disabled or person who is developmentally disabled~~] with a developmental
56 disability or traumatic brain injury of a prior guardian's inability to

1 serve and the standby or alternate standby guardian's duty to serve,
2 seek court confirmation or renounce such role shall allow the court to:

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

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

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

15 2. After the appointment of a guardian, standby guardian or alternate
16 guardians, the court shall have and retain general jurisdiction over the
17 person [~~who is intellectually disabled or person who is developmentally~~
18 ~~disabled~~] with a developmental disability or traumatic brain injury for
19 whom such guardian shall have been appointed, to take of its own motion
20 or to entertain and adjudicate such steps and proceedings relating to
21 such guardian, standby, or alternate guardianship as may be deemed
22 necessary or proper for the welfare of such person [~~who is intellectual-~~
23 ~~ly disabled or person who is developmentally disabled~~].

24 § 13. Section 1759 of the surrogate's court procedure act is REPEALED.

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

27 § 1760. Corporate guardianship

28 No corporation may be appointed guardian of the person under the
29 provisions of this article, except that a non-profit corporation organ-
30 ized and existing under the laws of the state of New York and having the
31 corporate power to so act [~~as guardian of a person who is intellectually~~
32 ~~disabled or person who is developmentally disabled may be appointed as~~
33 ~~the guardian of the person only of such person who is intellectually~~
34 ~~disabled or person who is developmentally disabled~~] may be appointed.

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

37 § 1761. Application of other provisions

38 To the extent that the context thereof shall admit, the provisions of
39 article seventeen of this act shall apply to all proceedings under this
40 article [~~with the same force and effect as if an "infant", as therein~~
41 ~~referred to, were a "person who is intellectually disabled" or "person~~
42 ~~who is developmentally disabled" as herein defined, and a "guardian" as~~
43 ~~therein referred to were a "guardian of the person who is intellectually~~
44 ~~disabled" or a "guardian of a person who is developmentally disabled" as~~
45 ~~herein provided for~~].

46 § 16. This act shall take effect on the first of January next succeed-
47 ing the date on which it shall have become a law.