§ 81.19 Eligibility as guardian.

(a) 1. Any individual over eighteen years of age, or any parent under eighteen years of age, who is found by the court to be suitable to exercise the powers necessary to assist the incapacitated person may be appointed as guardian, including but not limited to a spouse, adult child, parent, or sibling.

2. A not-for-profit corporation organized to act in such capacity, a social services official, or public agency authorized to act in such capacity which has a concern for the incapacitated person, and any community guardian program operating pursuant to the provisions of title three of article nine-B of the social services law which is found by the court to be suitable to perform the duties necessary to assist the incapacitated person may be appointed as guardian, provided that a community guardian program shall be appointed as guardian only where a special proceeding for the appointment of a guardian under this article has been commenced by a social services official with whom such program was contracted.

3. A corporation, except that no corporation (other than as provided in paragraph two of this subdivision) may be authorized to exercise the powers necessary to assist the incapacitated person with personal needs.

(b) The court shall appoint a person nominated as the guardian in accordance with the provisions of section 81.17 of this article unless the court determines the nominee is unfit or the alleged incapacitated person indicates that he or she no longer wishes the nominee to be appointed.

(c) In the absence of a nomination in accordance with section 81.17 of this article, the court shall appoint a person nominated by the person alleged to be incapacitated orally or by conduct during the hearing or trial unless the court determines for good cause that such appointment is not appropriate.

(d) In making any appointment under this article the court shall consider:

1. any appointment or delegation made by the person alleged to be incapacitated in accordance with the provisions of section 5-1501,

5-1601 or 5-1602 of the general obligations law and sections two thousand nine hundred sixty-five and two thousand nine hundred eighty-one of the public health law;

2. the social relationship between the incapacitated person and the person, if any, proposed as guardian, and the social relationship between the incapacitated person and other persons concerned with the welfare of the incapacitated person;

3. the care and services being provided to the incapacitated person at the time of the proceeding;

4. the powers which the guardian will exercise;

5. the educational, professional and business experience relevant to the nature of the services sought to be provided;

6. the nature of the financial resources involved;

7. the unique requirements of the incapacitated person; and

8. any conflicts of interest between the person proposed as guardian and the incapacitated person.

(e) Unless the court finds that no other person or corporation is available or willing to act as guardian, or to provide needed services for the incapacitated person, the following persons or corporations may not serve as guardian:

1. one whose only interest in the person alleged to be incapacitated is that of a creditor;

2. one, other than a relative, who is a provider, or the employee of a provider, of health care, day care, educational, or residential services to the incapacitated person, whether direct or indirect.

(f) Mental hygiene legal service may not serve as a guardian.

(g) 1. In making an appointment or considering a revocation of an appointment under this article, the court also may obtain and consider,

and may authorize a court evaluator to review the same and report to the court concerning, any of the following information regarding the guardian or proposed guardian, and, if the incapacitated person resides or will reside with such guardian or proposed guardian, any person eighteen years or older residing in the guardian or proposed guardian's household:

(i) a criminal history record check of such person or persons; and in furtherance thereof, the court shall be authorized to: (1) obtain a set of such person's fingerprints; (2) direct that the division of criminal justice services promptly provide to the court a criminal history record, if any, with respect to such person or a statement that such person has no criminal record; and (3) direct the submission of such person's fingerprints by the division of criminal justice services to the federal bureau of investigation for purposes of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine if such person has a criminal history in any state or federal jurisdiction;

(ii) reports for such person or persons from the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law;

(iii) indicated reports for such person or persons from the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, upon a finding by the court, pursuant to paragraph e of subdivision four of such section, that such information is necessary for the court to determine whether to make or continue an appointment pursuant to this article;

(iv) reports for such person or person from the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law; and

(v) related decisions in court proceedings initiated pursuant to article ten of the family court act and related warrants issued under the family court act.

2. The court shall obtain and consider records and reports specified in paragraph one of this subdivision between the time the judge executes the order to show cause and the hearing date of the order to show cause

if a guardian or guardians are proposed in the petition or, as soon as a guardian or guardians are proposed by a party to the proceeding or nominated by the person alleged to be incapacitated, during a proceeding under this article.

3. Upon consideration of all factors bearing on the best interests of the incapacitated person including consideration of all relevant factors in section seven hundred fifty-three of the correction law, the records and reports specified in paragraph one of this subdivision, and the court evaluator's report thereon, and after notifying counsel involved in the proceeding, or in the event of a self-represented party notifying such party, the court may appoint, refuse to appoint or revoke the appointment of any person as guardian pursuant to this article.

4. Where the court requests a criminal history record for a person pursuant to this section, the court shall provide the subject of the request with a copy of his or her criminal history record, if any, a reasonable time before consideration of such record under this subdivision and inform such person of his or her right to seek correction of any incorrect information contained in such record pursuant to regulations and procedures established by the division of criminal justice services.