

# Glossary of Terms/Definitions

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**The following glossary of terms is intended to provide general, not technical information about definitions and words associated with guardianship, aging, disability, and other legal areas of interest. Many sources were used to compile this list, and there may be more than one "definition" for a word/term. \***

**Accounting:** An annual report provided by a Guardian of the Property to the Surrogate's Court of the money spent, distributed, and earned including any fees and unpaid bills. This includes support papers, like a will, receipts, bills and taxes. Accountings are also used in legal proceedings regarding estates, non-probate administration, and trusts.

**Adult Protective Services (APS):** APS is a mandated service provided by the 58 local social services districts in New York State. It involves intake, investigation, and assessment of referrals of abuse, neglect, and financial exploitation of impaired vulnerable adults who live in the community. APS workers develop services plans for eligible clients to remedy physical abuse, sexual abuse, emotional abuse, neglect, financial exploitation, or to address unmet, essential needs of adults. APS serves adults (age 18 and older) who, due to physical or mental impairments:

- are unable to protect themselves from abuse, neglect, financial exploitation or other harm; or
- have no one available who is willing and able to assist responsibly.

Services provided (directly or through referral) may range from safety monitoring, linkages with other service providers (health, mental health, aging, etc.), assistance in obtaining benefits, informal money management, to appointment as a representative payee, to petitioning a court for appointment as a guardian or for some other legal intervention.

**Advance Directive for Healthcare:** A document setting forth an individual's wishes regarding medical care and end-of-life decisions. These advanced directives can be in the form of a healthcare power of attorney, health care proxy or living will.

**Advocate:** A person, who assists, defends, pleads, or prosecutes for another. An advocate is also someone who fights for something or someone, especially someone who fights for the rights of others. According to OPWDD regulations, a recognized

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advocate for a person with developmental or intellectual disabilities includes a person or organization recognized, appointed, or otherwise authorized by a voluntarily or State operated facility, program or agency, or by an appropriate court, a family physician, a primary or secondary health care facility, or by an established advocacy organization or committee such as the Mental Hygiene Legal Service (MHLS), Consumer Advisory Board (CAB), or the Protection and Advocacy System for Developmental Disabilities, Inc. (PASDD)] the independent agency designated by State or Federal law to conduct the protection and advocacy programs for individuals. Such a recognized advocate shall represent the rights, welfare, and interests of the person with developmental disabilities as if they were the advocate's own rights, welfare and interests. The advocate attempts to facilitate the person's access to appropriate services and programs; and works to ensure that the care provided the person for whom the advocate is interested, is of the highest quality.

**Affidavit:** An affidavit is a written statement from an individual made under oath that what the individual is saying is the truth and they must personally be aware of the facts contained in the statement.

**Affidavit of service:** Whenever any legal papers are served, the person serving the papers, known as the process server, completes this form confirming that the papers were served. This form is filed with the Court after the service is done. This form is called an Affidavit of Service. Licensed process servers will have their own forms. The Affidavit of Service tells everyone about the service of the papers. It states:

- What papers were delivered
- Who delivered the papers
- Where the papers were delivered
- Date and time when the papers were delivered
- How the papers were delivered
- If given to someone, a description of the person
- If papers were mailed, when and how

The Affidavit must be signed by the server in front of a notary public. After the Affidavit of Service is done, it must be filed with the Court.

**Agent:** Someone that has legal authority to act for another. A representative.

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**Alleged Incapacitated Person or Person at Risk:** Individual for whom a Guardianship Proceeding has been initiated.

**Amend:** To change or fix something.

**Annual Report – Guardian of the Property:** If the person with intellectual or developmental disabilities has any income or assets, and not placed in a Supplemental/Special Needs Trust, then a guardian of the property may be necessary. A guardian of the property is responsible for depositing the person's funds into a bank account that is jointly held by the guardian and the clerk of the Court. Money cannot be withdrawn without Court order and an annual report is required to be filed with the Surrogate's Court each January. This report describes what has happened to the person and their income and assets in the past 12 months.

**Appearance:** Going to court. A legal paper that says you will participate in the court process.

**Arm's Length Relationship:** A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both. It is also defined as the description of an agreement made by two parties freely and independently of each other, and without some special relationship, such as being a relative, having another deal on the side or one party having complete control of the other.

**Article 17-A of the Surrogate's Court Procedures Act (SCPA):** In New York State, when a person turns 18 years old, they are assumed to be legally competent to make decisions for themselves. If a person 18 years or older has a developmental or intellectual disability, or a traumatic head injury (that occurred before or after the age of 22), and has difficulty making decisions for themselves, the Surrogate's Court can be asked to appoint a guardian for them. Article 17-A SCPA is a plenary statute, which was enacted in 1969, to permit parents to exercise continued oversight and decision making on behalf of individuals with their personal and/or financial needs. The person asking the court to appoint a 17-A guardian (the petitioner) is typically a parent, other family member, relative, guardian, or a close family member. Certain not-for-profit organizations/corporations such as NYSARC, Inc. (D/B/A The Arc New York) can also petition the Court for guardianship of the person, or serve in the guardianship succession when asked by families to serve as guardian of last resort.

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**Important Note:** An Article 17-A guardianship is the most restrictive type of guardianship in the State of New York. It covers most decisions typically made by a parent for a child. For this reason, before pursuing an Article 17-A guardianship, families and other parties should explore whether other less restrictive options might be more appropriate to support the adult person with intellectual or developmental disabilities, while still allowing them to continue making certain decisions for themselves. Some of these options may include Health Care Proxies, Power of Attorney, Supported Decision Making, Supplemental/Special Needs Trusts and an Article 81 guardian.

**Article 81 Mental Hygiene Law (MHL):** Article 81 of New York Mental Hygiene Law was enacted in 1993, which replaced two older and restrictive Guardianship statutes, Article 77 MHL and Article 78 MHL. The appointment of a Conservator, Article 77 MHL and the appointment of a Committee pursuant to Article 78 of the Mental Hygiene Law (MHL). The Committee was based on the findings of complete incompetence of an individual, which deprived a person of their civil rights. In 1972, New York State enacted the Conservator statute, which authorized a court to appoint a guardian to manage the individual's financial affairs. Not all Article 81 guardians (hereinafter "guardians") in New York have the same powers. Guardianship orders are specifically tailored so that the powers that are granted to the guardian are those that are specifically necessary to meet the needs of the person who is incapacitated. For example, a person may not be able to pay their bills or manage their money but may have the ability to make healthcare decisions. In such a case, a court might appoint a guardian with powers that are limited to financial management.

**Attorney of record:** The lawyer whose name is listed in a case file as representing one of the parties in a case.

**Beneficiary:** A person who can receive something because of a legal arrangement or documents.

**Bequest:** A gift in a will of money or other real/personal property.

**Best Interest Standard:** The standard for appointment of a person requiring a SCPA 17-A Guardian is "*best interest of the individual.*" (SCPA 1750) The statute does not establish a burden or standard of proof required for the appointment, and the determination of incapacity, and a need for guardianship support is currently based on the individual's diagnosis of intellectual or developmental disabilities (I/DD). A

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person or organization with corporate powers petitioning for Article 17-A guardianship must establish that the appointment of a guardian of the individual with IDD would be in their best interest. The term “best interest” is not specifically defined in Article 17-A. In the absence of statutory guidance as to what the term “best interest” involves, the Surrogate’s Courts have considered the functional capabilities and limitations of the person being considered, and the necessity for guardianship.

***Below is additional best practice guidance on making or assisting with decisions for a person when communication is and not possible:***

***When Communication is possible:*** A guardian should only exercise authority over the person as necessary in light of the person’s limitations. The Guardian must consider the expressed desires and personal values of the person when making decisions. The guardian must also encourage the person to participate in making decisions and to act on his or her own behalf. The guardian must also obtain input from the person whenever meaningful communication is possible.

***When Communication is not possible:*** If a guardian has made a reasonable effort to find out what the person with I/DD wants but has not been able to do so, the guardian must decide what is in the person with I/DD’s best interests, based on:

- The reason for and nature of the proposed decision
- The possible benefit or necessity of the decision
- The possible risks and other consequences of the decision
- Any available alternatives and their risks, consequences and benefits; and
- Any other information that the guardian believes the person with I/DD would have considered if able to make the decision, such as the views of family and friends.

Since there is greater awareness of the abilities and constitutional rights of individuals with disabilities, a court must consider “the due process” requirement that any resulting deprivation of the respondent’s liberty must employ the ‘least restrictive means’ available to achieve the objective of protecting and providing the necessary supports to the individual. Best practice dictates that the courts are now responsible for determining whether less restrictive alternatives (other than an Article 17-A guardianship) are available and must inquire into the resources that are accessible to help the respondent. The resources may include an informal support network of family,

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friends, and other formal services. As guardianship under Article 17-A oftentimes is viewed as an option of last resort, some courts have considered tailored guardianships under Article 81 of the Mental Hygiene Law (“Article 81”) and the use of advance directives may be a lesser restrictive means, which prevent the court from appointing an Article 17-A guardianship for someone in appropriate *circumstances*.

**Bond:** A cash payment or pledge of property that guarantees that a Guardian of the Person or property will fulfill their duties. Most families and NYSARC, Inc. are not required to purchase a bond.

**Burden of proof:** A person’s duty to prove the truth of their claim.

**Capacity:** Capacity describes a person's ability to make a decision. In a medical context, capacity refers to the ability to utilize information about an illness and proposed treatment options to make a choice that is consistent with one's own values and preferences. Mental capacity refers to the ability to make decisions. Competence on the other hand refers to the ability to perform actions needed to put decisions into effect. The four key components to address in a capacity evaluation include: 1) communicating a choice, 2) understanding, 3) appreciation, and 4) rationalization/reasoning.

**Caption:** The heading of a legal document stating the court, and other proceeding information

EX. SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

Proceeding for the Appointment  
Of a Guardian for

JOHN M. DOE

Pursuant to SCPA Article 17-A

**Change of Venue:** When a civil or criminal matter is moved from one court’s jurisdiction to another.

**Clerk:** A court official who handles filings, motions, pleadings, etc.

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**Clerk of the court:** A person authorized by law to administer (give) oaths and sign the process or mandates of the court. May also be known as the Chief Clerk.

**Commingle:** When someone mixes properties or money intended for different purposes into a common fund or bank account.

**Commissions:** Compensation set by Article 81 Guardianship statute, to which an individual, such as a guardian of the person and/or property of the “incapacitated person” (IP), is entitled. The court shall establish, and may from time to time modify, a plan for the reasonable compensation of the guardian or guardians. The plan for compensation of such guardian must take into account the specific authority of the guardian or guardians to provide for the personal needs and/or property management for the incapacitated person, and the services provided to the incapacitated person by such guardian. If the court finds that the guardian has failed to discharge their duties satisfactorily in any respect, the court may deny or reduce the compensation, which would otherwise be allowed.

**Competency:** The mental ability to understand problems and make decisions. Common law dictates that individuals possess autonomy and self-determination, which encompass the right to accept or refuse medical treatment. Management of medical treatment can be complicated in situations when the ability of the patient to make reasonable decisions is called into question. Our legal system endorses the principle that all persons are competent to make reasoned decisions unless demonstrated to be otherwise.

**Conservator of the Estate:** An adult who was previously able to make their own decisions may become incapacitated as the result of an injury or illness. Seniors may lose the capacity to make decisions because of Alzheimer’s disease or other dementia. In such cases, an Article 81 guardianship may be appropriate. This type of guardianship is filed in Supreme Court in New York. It is very individualized and specific regarding which decisions the guardian has the power to make and which rights remain with the person with a disability. In some states, the term “**conservatorship**” is used instead of guardianship, sometimes to refer to a person who has power only to make financial decisions for another.

**Corporate Guardian:** Section 1760 of Article 17-A SCPA authorizes non-profit corporations organized and existing under the laws of New York State to serve as

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guardian of the person only, if they have the corporate power to act on behalf of an individual with intellectual or developmental disabilities or traumatic head injuries. A corporation appointed as an Article 81 guardian of the person and/or property for an individual may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities and nonprofit organizations.

**County Surrogate:** An elected Constitutional Officer who serves as the Surrogate's Court Judge and hears cases involving the affairs of decedents, including the probate of wills and the administration of estates. It also handles adoptions, as well as Article 17 and 17-A Guardianship Proceedings.

**Correspondent:** Someone (not on the staff of the facility) who assists an individual to obtain necessary services, participates as a member of that person's program planning process, and who receives notification of certain significant events in the life of that person. The fact that someone is providing advocacy for an individual as a correspondent does not grant that person with any legal authority over that person's affairs.

**Court Decree:** The decisions given by the Surrogate's Court, Supreme Court or other courts of law are either orders or decrees. A decree is followed by a judgement that is declared by the court after hearing the case. It is important to note that decree and order are analogous to each other. Once the court is satisfied that the interests of the person who is the subject of a guardianship proceeding will be best served by the appointment of a guardian, and that there are no other less restrictive options appropriate to meet the needs of the individual, then it will issue a formal decree appointing the guardian(s) of the person, property, or limited guardian of the property.

**Decisional Capacity:** This is the decision-making capacity or ability of a person to understand the benefits, risks and consequences of, and the alternatives to a proposed treatment, intervention (including no treatment) or other decisions effecting their lives. Capacity is the basis of informed consent. Individuals have medical decision-making capacity if they can demonstrate understanding of the situation, appreciation of the consequences of their decision, and reasoning in their thought process, and if they can communicate their wishes. It also means that a person can or is unable to evaluate information or make or communicate decisions.

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**Designation of a guardian:** A formal means of nominating a guardian before a guardian is needed.

**Due Process:** the duty of government to follow rules in legal proceedings. The U.S. Constitution guarantees due process. This means that a person may not have life, liberty, or property taken away without their day in court. What are the due process protections for an individual who is the subject of a guardianship petition?

Because individuals are at risk of losing independence and decision-making authority, most state laws lay out protections for the person named in the court petition, such as the right to:

- Receive notice of the petition
- Be represented by an attorney
- Have a hearing on the need for a guardianship
- Be present at all court proceedings (*Article 17-A SCPA may waive the respondent's appearance if certifications support that decision, to the extent that attendance is likely to result in physical harm or determined by the court to not be in the best interest of the person*).
- Compel, confront and cross-examine all witnesses
- Present evidence
- Typically have the need for guardianship proven by "clear and convincing evidence". (Article 17-A SCPA does not require this currently).
- Receive notice of all court orders
- Appeal the determination

**E Filing:** Electronic Filing. A system for the court to get documents over the internet rather than by mail, fax, or regular mail.

**Estate:** All the property of an adult, a child, a trust or someone who has died.

**Family Guardian:** An individual who is appointed as guardian for a person to whom they are related by blood or marriage.

**First Party Trust:** A trust account funded with assets or income that belong to an individual with a disability and who is the beneficiary of the trust.

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**Functional Assessment:** A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations.

**Grantor:** Is the person who creates and funds a trust.

**Guardian:** A guardian can be a person (most often a parent or family member), a non-profit corporation, a department of social services official, a public agency, and a community guardian program, with authority to serve as a guardian. The guardian is appointed by the court with the legal right and authority to make decisions for a person who has been found by the Court to lack decision-making capacity in different areas and needing assistance. Anyone can apply to be a guardian if you are eighteen or older and a legal resident or citizen of the United States. Someone with a criminal record may not be able to serve as a guardian. The Judge makes the final decision of who can be the guardian. There are different types of Guardianship in New York. For purposes of this glossary, we will only address Article 17-A of the Surrogate's Court Procedure Act.

**Guardian Ad Litem:** A person appointed by the Court to protect and represent the rights of a person during a guardianship proceeding. In New York State, Mental Hygiene Legal Services (MHLS) are most frequently appointed by the Surrogate's court without a fee to serve as the Judge's eyes when a person with I/DD, who resides in a residence, certified by OPWDD is the subject of a Guardianship proceeding. A party can also ask the court to appoint a "guardian ad litem" if the person cannot determine their own best interests without assistance (because their ability to understand the guardianship proceeding or make decisions about them is impaired). The Guardians ad litem has a unique role as they act as the eyes of the court during the guardianship proceeding, conducting interviews, and compiling reports to present to the court. They are meant to speak to the ability of the respondent to make decisions for themselves, and to make recommendations to the court regarding the outcome of the guardianship proceeding.

**Guardian of the Person:** An individual appointed by the court to handle the personal affairs of the individual with I/DD, including decisions about medical and dental care, day and residential services, advocacy, and other supports. The guardian of the person makes decisions about housing, medical care, legal issues, financial issues and services. Unlike a guardian of the property, a guardian of the person does not manage

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the financial affairs or estate of the individual. Non-profit corporations such as NYSARC, Inc. can serve as Guardian of the Person only.

**Guardian of the Property:** An individual appointed by the court, most frequently a parent or family member to manage the financial affairs of a person with intellectual or developmental disabilities who has been determined to lack capacity. Unlike a guardian of the person, a guardian of the property is not responsible for and does not have authority to make decisions regarding the personal well-being of the individual considered for guardianship. Rather, the guardian of the property handles financial matters, including assets, income, expenses and liabilities.

**Guardianship:** Is a legal arrangement where a court gives a person or a non-profit corporation like NYSARC, Inc., the legal right and authority to make decisions for another person who is unable to make decisions for themselves such as a child, an adult who is determined to be incapacitated or someone with an intellectual or developmental disability who has been certified as requiring lifelong assistance in managing their personal and/or financial affairs. In New York State, a guardianship proceeding is handled by the Family Court, Supreme Court or Surrogate's Court depending on the type of guardianship asked for, and the person for whom guardianship is being requested.

**Healthcare Proxy:** An individual designated by an advance directive to make medical and end-of-life decisions for the principal (the person who executed the advance directive) if the principal becomes unable to do so.

**Incapacitated Person:** A person whose ability to receive and evaluate information or to communicate decisions is impaired to the degree that the person cannot provide for their physical health or safety without support from others, including court-ordered assistance is considered an "incapacitated person". Physical health or safety includes areas such as health care, food, shelter, clothing, personal hygiene, and protection from harm. Before appointing a guardian for a person, the court must find that the person is an "incapacitated person" (Article 81) or unable to manage their personal and/or financial affairs without the assistance of a guardian (Article 17-A).

**Incapacity, Determination of:** An individual legally declared by the court as unable to govern themselves and/or unable to manage their own affairs. Pursuant to Article 81

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MHL, the determination of incapacity shall be based on clear and convincing evidence and shall consist of a determination that a person is likely to suffer harm because: the person is unable to provide for personal needs and/or property management: and the person cannot adequately understand and appreciate the nature and consequences of such inability.

**Informed Consent:** Broadly defined, informed consent is a process in which an advocate, provider or medical professional educates an individual about the risks, benefits and alternatives of a particular action, treatment or service that results in the individual authorizing or declining treatment. The individual must have the capacity to make a voluntary decision about whether to undergo the action, treatment or service. The foundation of informed consent is the ethical principle that people should have a right to decide what is to be done with their body. The components of this principle are self-determination and autonomy. The steps necessary to this process are listed below.

- Describe the action, treatment or service
  - Explain the individual's role in the decision-making process
  - Discuss the possible alternatives to the proposed action, treatment or service
  - Provide information about the potential risks of the action, treatment or services
- Individuals who do not have the capacity to provide informed consent may still have the ability to provide important background information and state their preferences regarding care options. An individual's agreement to a particular course of action based on a full disclosure of facts is needed to make the decision intelligently.

**Interested Parties:** A person or agency that has an involvement with the person who is the subject of the guardianship. Interested parties are typically the same individuals entitled to notice of the initial petition for guardianship – i.e., the incapacitated person's spouse, parent, adult child, etc.

**Irrevocable:** An irrevocable trust is a trust that cannot be revoked or changed. All first party SNTs must be irrevocable. A third party SNT can be either irrevocable or revocable.

**Jurisdiction:** The authority of the court to hear and decide a case. The geographic area the court has authority over.

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**Least Restrictive Alternative:** A mechanism, course of action, or environment that allows the person being considered for guardianship or other interventions to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet their needs. The least restrictive form of intervention in guardianship proceedings means that the powers granted by the court to the guardian with respect to the person being considered for guardianship (respondent) take into consideration only what is deemed necessary to appropriately meet that person's personal needs and/or financial matters. Although the guardian appointed by the Surrogate's Court in an Article 17-A Guardianship proceeding is most commonly awarded plenary powers, the guardian's authority should always be consistent with affording that person the greatest amount of independence and self-determination in light of their understanding and appreciation of the nature and consequences of their functional limitations.

**Letters of Guardianship:** The document from the court that states the guardian's powers and whether there are any specific limitations. The guardian presents the Letters when needed to show what their powers are, such as when dealing with financial issues, medical providers, or any third party.

**Limited Guardian of the Property –** This is a less intrusive, more individualized, type of guardianship in which a guardian is appointed with authority as to some – but not all – areas. A limited guardianship is established, based upon a court's finding that the person lacks the capacity to do some, but not all, of the tasks necessary to care financially for themselves. When a person with intellectual or developmental disabilities is wholly or substantially self-supporting by means of their wages or earnings from employment, but the court still finds them needing the assistance of a guardian to help them with property or financial matters, a limited guardian of the property can be appointed. The guardian's role is to receive, manage, disburse and account for assets from sources other than the wages or earnings of the individual. The person with IDD shall retain their power to contract or legally bind themselves 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.

**Mental Hygiene Legal Services (MHLS):** Provides legal services, advice and assistance to individuals receiving care or alleged to be in need of care at inpatient and community-based facilities for individuals with mental disabilities and certain patients

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or residents of residential health care facilities. MHLS represents individuals in judicial and administrative proceedings concerning admission, retention, transfer, treatment and guardianship.

**MOLST:** Medical Orders for Life-Sustaining Treatment (MOLST): A medical order form that tells others the patient's medical orders for life-sustaining treatment. MOLST is generally for patients with serious health conditions. All health care professionals must follow these medical orders as the patient moves from one location to another, unless a physician, nurse practitioner, or physician assistant examines the patient, reviews the orders and changes them.

There is a specific law governing the decision-making process that differs for individuals with I/DD. Surrogate's Court Procedure Act (SCPA) Section 1750-b must be followed when *making a decision* for an individual with I/DD who lacks capacity and does not have a health care proxy. Individuals with I/DD and have the capacity can have a MOLST form completed. They can work with their physician, Nurse Practitioner or Physician's Assistant as of June 17, 2020 to complete a MOLST as described for adult patients. [The DOH Checklist #1](https://www.health.ny.gov/professionals/patients/patient_rights/molst/docs/checklist_1.pdf) ([https://www.health.ny.gov/professionals/patients/patient\\_rights/molst/docs/checklist\\_1.pdf](https://www.health.ny.gov/professionals/patients/patient_rights/molst/docs/checklist_1.pdf)) is used. Additional Checklist for different individuals [https://www.health.ny.gov/professionals/patients/patient\\_rights/molst/](https://www.health.ny.gov/professionals/patients/patient_rights/molst/)

- If an individual with I/DD lacks capacity and has a properly completed health care proxy, the health care agent works with the physician, NP, or PA, as of June 17, 2020, to complete MOLST as described for adult patients.
- A properly completed health care proxy must include the assessment of capacity of the individual to choose a health care agent and appropriate witnessing.
- Individuals with I/DD who lack capacity to make their own health care decisions and do not have a health care proxy have special requirements for completing a MOLST.
- The [OPWDD Checklist](https://opwdd.ny.gov/system/files/documents/2020/04/molst-checklist-opwdd-fillable.pdf) (<https://opwdd.ny.gov/system/files/documents/2020/04/molst-checklist-opwdd-fillable.pdf>) must be completed first. The medical decision-maker is the Surrogate identified per the Surrogate Court Procedure Act § 1750-b.

**Petition:** A formal, written request presented to a court or other official body.

Someone or an organization can file a petition or application with the court seeking

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appointment of a guardian for a person alleged to be incapacitated or requiring assistance in managing their personal and/or financial affairs.

**Petitioner:** The Petitioner is the person or organization/agency who signs the document called a Petition for Guardianship and asks the court to appoint a guardian.

**Plenary Guardian:** A person appointed by the court to exercise all delegable legal rights and powers of the individual after the court has found the individual lacks the capacity to perform all of the tasks necessary to come for their person or property.

**Power of Attorney or POA:** A power of attorney, or POA, is a legal document that lets you grant another person the authority to make important financial and business decisions on your behalf. This person is called your agent, and you, the creator of the POA, are called the principal. When used for estate planning, most POAs are set up to be used in the event you're incapacitated and can't communicate your wishes or act for yourself. Simply put, a POA allows your agent to manage your affairs when you're not able to. You can grant your agent broad powers to do almost anything you could do for yourself (general power of attorney), or you can choose the powers you want to give an agent (specific power of attorney). You can choose to appoint an agent immediately or you can make the appointment effective only if you become disabled. You can also state that the appointment will be revoked upon your gaining or regaining capacity. A person doesn't need to hire a lawyer to create a power of attorney. You can do it yourself, saving you time and money. As long as you follow New York's requirements, any POA you create is just as legal as one drafted by an attorney. As of June 13, 2021, the state of New York updated its laws to make the creation of a statutory short form POA (a.k.a., a financial POA) more intuitive and with the help of obtaining free power of attorney forms, it's easier than ever to create a New York POA that reflects your wishes.

**Process:** The legal steps used by the court to notify parties and get power (jurisdiction) over them.

**Proof of Service:** Papers filed as proof that a person was served. May include affidavits of service and mailing receipts.

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**Remainder Beneficiary:** When a trust ends as a result of the death of the beneficiary, the remainder beneficiaries are the individuals who will receive any remaining trust assets.

**Representative Payee:** A representative payee is an individual or organization that receives Social Security and/or SSI payments for someone who cannot manage their own money. Payees must use the funds for the current and foreseeable needs of the beneficiary and save any remaining funds for the beneficiary's future use.

**Respondent:** In a guardianship proceeding, the person who is alleged to be incapacitated and in need of a guardian is sometimes called the "respondent".

**Revocable:** A revocable trust is a trust in which the grantor can revoke or change the trust terms at any time, including undoing the trust arraignment entirely.

**Self-Determination:** Self-determination is a concept reflecting the belief that all individuals have the right to direct their own lives. Self-determination is an idea that includes people choosing and setting their own goals, being involved in making life decisions, self-advocating, and working to reach their goals.

**Service:** Delivery of papers in a legally appropriate way. For example, notice of petition for appointment of a guardian is served upon the person being considered for guardianship by **personal service**, meaning that copies of the papers are personally delivered.

**Substituted Judgement:** Substituted-Judgment Doctrine is a principle that that allows a surrogate decision-maker to attempt to establish, with as much accuracy as possible, what decision a person who is deemed incapacitated or incompetent would make if they were competent to do so. In theory, the doctrine of substituted judgment looks to the individual to determine what s/he would do in a particular situation if she were competent. This doctrine is applicable to situations where a person, once competent, is rendered incompetent to consent to medical procedures through injury or disease. The once competent person has developed a system of morals and beliefs, and patterns of behavior, which the court can examine when evaluating what s/he would do in a particular situation.

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**Successor Guardian:** A guardian who is appointed to act upon the death or resignation of a previous guardian.

**Supplemental Needs Trust:** A trust that can be used to preserve a disabled beneficiary's eligibility for means-tested government benefits such as Medicaid and Supplemental Security Income (SSI). Also commonly referred to as a Special Needs Trusts or "SNT." An SNT can be funded with first or third-party monies. Depending on the source of funding, different Medicaid payback provisions apply upon the beneficiary's passing. There are also Pooled SNTs that are run by Non-for-profit organizations such as the Arc New York and individual stand-alone SNTs where the trustee is often a family member, bank, or other trusted party.

**Supported Decision-Making (SDM):** A tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices. A person using SDM selects trusted advisors, such as friends, family members and/or professionals to serve as supporters. The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make their own, informed decisions. SDM can be entirely informal, as is the case for many people with I/DD who live in the community and get decision-making support from family, friends, and care and service providers on an as-needed basis.

SDM can be more formalized, as when it is the result of a planned facilitation process, such as that used by Supported Decision-Making New York (SDMNY). The person with I/DD (the "Decision-Maker") and trusted persons in their lives they have chosen (the "Supporters") reach a written agreement (the "Supported Decision-Making Agreement") that describes the areas/domains in which the Decision-Maker desires support, the kinds of support they want from each Supporter, and how they want to receive that support. Additional information can be found on the Supported Decision-Making New York website: <https://sdmny.org/>

**Surrogate Decision-Making Committee (SDMC) Program:** An alternative to the court system that is authorized to provide consent for non-emergency major medical treatment and end-of-life care decisions for people who qualify. The program consists of volunteer panels comprised of 4 people each that make the decision, providing for quicker, more accessible, cost-free, and personalized decisions on behalf of individuals receiving services. SDMC considers major medical treatment decisions

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and end of life care decisions for certain individuals who are unable to provide informed consent and have no authorized, willing, and available surrogate to act on their behalf. Individuals believed to be incapable of providing informed consent, have no surrogate authorized to act on their behalf, and

- Currently reside or have formerly resided in a residential program operated, licensed, approved, or funded by the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), or the Office of Addiction Services and Supports (OASAS); or
- Currently or previously receive (d) individual support, case management, family care or day programs approved or funded by OPWDD.

**Surrogate's Court:** The Surrogate's Court of the State of New York handles all probate and estate proceedings in the New York State Unified Court System. All wills are probated in this court and all estates of people who die without a will are handled in this court. Unclaimed property of the deceased without wills is handled by the Judge of this court. It also handles adoptions as well as guardianship appointments under Article 17-A SCPA.

There is a Surrogate's Court in each county in the state. The judges of this court are styled the "Surrogate of [X] County" The surrogate is elected countywide and is required to be a resident of the pertaining county. Each of New York's 62 counties has one surrogate, except New York County and Kings County, which have two each. Surrogates are elected to 10-year terms, except those in the five counties within New York City where surrogates are elected to 14-year terms. In some counties, usually those with a small number of inhabitants, the judge of the County Court holds at the same time the office of surrogate.

**Temporary Guardian:** A guardian that the court can appoint on a temporary basis in an emergency for an immediate or time-limited period. An example would be an emergency appointment for an immediate life-threatening medical decision or a six-month period to assist with a specific decision.

**Testamentary Trust:** A testamentary trust is a trust created under a last will & testament and is not funded until the death of the person who created the will. A testamentary trust can only be a third-party Supplemental Needs Trust (SNT).

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**Trustee:** One who, having legal title to property holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

**Will:** A legal paper that lists a person's wishes about what will happen to his or her personal property after death.

### **Special Note:**

**The NYSARC Corporate Guardianship Program:** The NYSARC, Inc. (d/b/a/ The Arc New York) corporate Guardianship Program was designed to provide necessary and ongoing support, advocacy, and oversight to individuals with intellectual and developmental disabilities (I/DD) who require assistance with their decision-making and quality of life. It was also created to offer families peace of mind, with the assurance and knowledge that an organization through its commitment to families, its multi-level infrastructure, and family-based board and membership would continue in perpetuity. The NYSARC Guardianship Program has been operating since 1970. During this time, the Program has succeeded in supporting the growing needs and decision-making choices for hundreds of people with I/DD and their families, with the utmost respect and dignity. The Program continues to evolve and strives to fulfill its mission under the auspices of the umbrella organization, The Arc New York.

### **Reference and Use of NYSARC, Inc. vs. The Arc New York**

Whenever referring to the organization as legal guardian on formal documents including court filings as well as signing documents as agent on behalf of the corporation as legal guardian, then NYSARC, Inc. should be used. If one is referring to the organization broadly, then you may use The Arc New York or NYSARC, Inc. d/b/a The Arc New York.

**For Chapter use Only:** When signing consents for different decisions on behalf of the person for whom NYSARC, Inc. is appointed Primary Guardian, the following signature is required:

[NYSARC, Inc.]

By:\_\_\_\_\_

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[Your Name], Chapter Guardianship Coordinator or Chapter Guardianship Committee member

\*The Glossary of Terms is a work in progress and will be revised occasionally to include additional definitions.