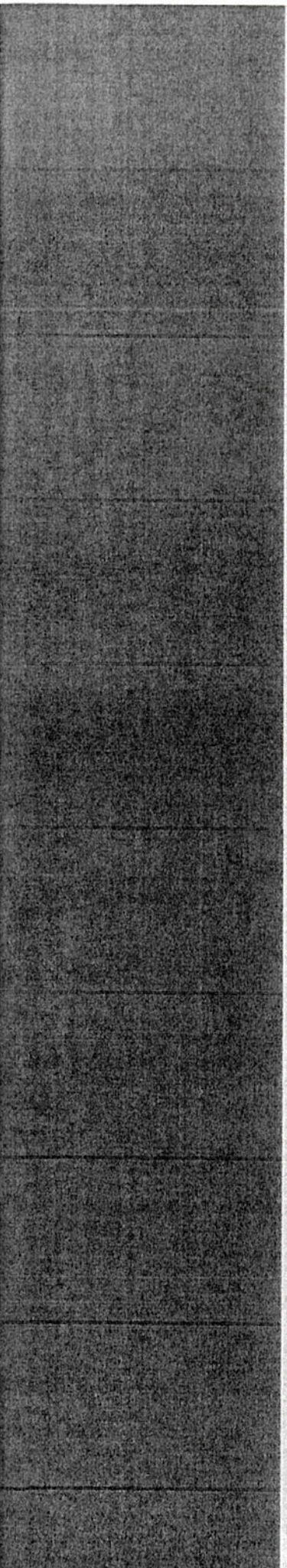




**Office for People With
Developmental Disabilities**

Guardianship Reform



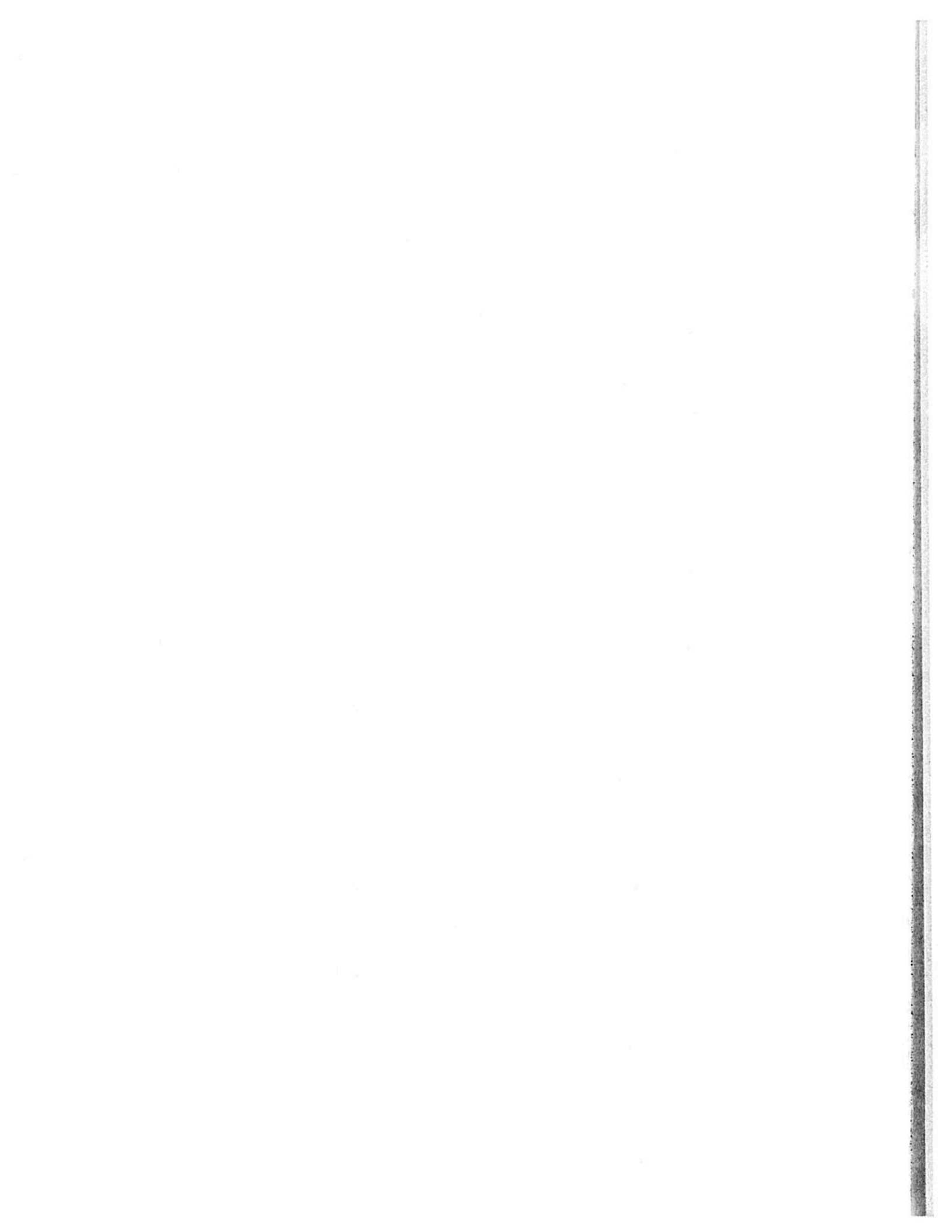
Why Change?



The Need for Change

- OPWDD seeks to maximize the opportunities for individuals to make decisions for themselves, consistent with their needs and desires
- Federal law requires that individuals be served in the least restrictive manner, consistent with their needs





Article 17-a

- Simple, efficient process to allow for families to obtain guardianship
- Current law does not provide for guardianships tailored to the specific needs of each individual except for medical decision making and end of life
- Law also lacks due process protections



Reform Effort

- Convened group of guardianship experts from major provider organizations and advocates to develop working draft of reform proposal - With draft proposal, seeking input from broad range of individuals, families, and providers to refine and improve the proposal



NEW YORK
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Office for People With
Developmental Disabilities

Guardianship Proposal



Overview

- Amend Article 17-A of the Surrogate's Court Procedure Act (SCPA) to:
 - Provide for guardianships tailored to specific needs of individuals;
 - Assure due process;
 - Remove outdated language; and
 - Preserve and ~~or~~ enhance simplicity of the process.



Petition Contents

- Petition will require guardians to specify the domains in which a guardianship is sought, or whether plenary guardianship is sought
- Specific domains would include:
 - Consent to health care
 - Management of money and other income
 - Choice of residence
 - Education, training, employment, supports and services



Petition Contents

- Submission of Certifications (Affirmation of Physicians and/or affidavit of Psychologist) no longer required.
- Focus now on functional abilities rather than a medical assessment of individual



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Notice and Opportunity to Object

- Notice required to individual as well as Mental Hygiene Legal Service (MHLS), in addition to those currently receiving notice.
- MHLS would conduct an initial review of the guardianship petition and interview the individual to determine whether the individual objects to the guardianship petition or its scope.



Appearances and Hearings

- Hearing required only in contested guardianship.
- Supporting evidence to establish guardianship necessary only in contested guardianships.
- Appearance of proposed guardian required in all cases, allowing for the court to address the prospective guardian.



Decision-making Standard

- Create a statutory guardian decision-making standard that:
 - Takes into account the abilities, preferences and desires of the person with developmental disabilities, and
 - Affords the person with a developmental disability the greatest amount of independence, self-determination and participation in the decisions affecting their life.



Decision-Making Standard

- Guardian shall exercise authority only as necessitated by the person's limitations
- Guardian must consider expressed desires of the individual and wherever possible, include the individual in the decision making process.
- The guardian shall always consult with the individual.



Annual Reporting

- Annual reporting requirement for guardians on forms to be developed by the Office of Court Administration.
- Corporate Guardianship Program forms, upon approval by OCA, could be substituted for the OCA forms.



Other Technical Changes

- Amend notice provisions for who must be notified of guardianship petition
- Include spouses, siblings and adult children in the list of those who may petition to be appointed as a guardian.
- Venue for guardianship proceedings is the county in which the person with a developmental disability resides or is physically present when the proceeding is commenced.



Limited Purpose Guardianship

- Allow for the appointment of a guardian for a limited purpose, such as making a single decision or for a brief stated period of time.



Additional Considerations



Additional Considerations

- Role of supported decision-making in our system
- Individuals without correspondents

