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Focus On...

“The Right to Make End of Life Health Care Decisions” An Update and Alert

On March 17, 2003, a new law, called the Health Care Decisions Act, became effective in New York State allowing guardians for persons certified as mentally retarded to make end of life decisions for their wards. The legislation represented a tremendous step forward in the law and for 17A guardians since many guardians are also the parents of their adult retarded child.

Missing, however, was the right of guardians of developmentally disabled persons to make the same end of life decisions. That omission was corrected on October 18, 2005 by the NYS Legislature but with a twist. Guardians of a developmentally disabled person may be given the authority to make end of life decisions if the medical certifications include a diagnosis of developmental disability (including cerebral palsy, autism, etc.) AND a diagnosis which “includes mental retardation or results in a similar impairment of general intellectual functioning or adaptive behavior” so that the person cannot manage their affairs. The latter diagnosis will suffice under the umbrella of developmental disability. The revised medical certification forms have a series of check-off boxes for the doctors and/or psychologist.

As a result of this legislative amendment, the medical forms were also updated to require a notary seal for the doctor’s signatures on the certification.

What if you were appointed as guardian before 2003? In each county, you may submit updated medical certifications and an application to request the authority to make end of life decisions under the amended section 1750-b of the Surrogates Court Procedures Act. You will need to contact the guardianship department of your county regarding the correct procedure and to obtain the new medical certification forms.

If you would like a presentation about 17A guardianship legal proceedings, at no charge, please call my office to schedule this important seminar.

The Law Office of Beth Polner Abrahams is dedicated to providing quality legal representation combined with personal attention to the legal needs of our clients.