

A Comparison Chart of 17-A Guardianship, Health Care Proxy and Power of Attorney

	17-A Guardianship	Health Care Proxy	Power of Attorney
How Authority is secured	Proceeding in Surrogate's Court based upon certification of two doctors that the PWIDD is either "intellectually disabled" or "developmentally disabled"	"Competent" adult signs HCP which is witnessed by two witnesses	Adult with "capacity" signs and dates the POA; has his/her signature acknowledged and the agent(s) sign the POA and have their signatures acknowledged.
Standard to secure Authority	<p>The person is incapable of managing him or herself and/or his or her affairs by reason of "intellectual disability" and such condition is permanent in nature or likely to continue indefinitely</p> <p style="text-align: center;">- or -</p> <p>The person has 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 such condition is permanent in nature or likely to continue indefinitely; and whose disability is attributable to a listed condition which originates before such person attains age twenty-two.</p>	Person is "competent" enough to understand that he or she: (i) has delegated authority to make health care decisions to another person; (ii) has expressed a desire that the other person exercise the decision making authority; and (iii) knows that the decisions to be made relate to his or her health care.	Person has the "capacity" to understand the nature and consequences of the act of executing and granting, revoking, amending or modifying a POA, any provision in a POA, or the authority of any person to act as agent under a POA
Authority to make Health Care Decisions	If two doctors certify that the PWIDD lacks "capacity to make health care decisions," the Court may grant that authority to make health care decisions to the Guardian.	Agent has authority to make health care decisions as described in the HCP	Agent has no authority under a POA to make health care decisions

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Scope of Authority	<p>An Article 17-A Guardianship is very broad and covers most decisions that are usually made by a parent for a child such as financial and healthcare decisions.</p> <p>SCPA Article 17-A does not provide for gradation of the Guardian's authorized powers</p> <p>SCPA Article 17A does not describe or circumscribe the powers granted. There is no statutory guidance as to the extent of this power, and surprisingly little discussion in cases decided by the Courts.</p> <p>If granted by the Surrogate's Court, the 17-A Guardian has the authority to make any and all health care decisions on behalf of the PWIDD which the PWIDD could make if he/she had capacity.</p> <p>A 17-A Guardian is considered the "personal representative" of the PWIDD under HIPAA and is granted full access to the PWIDD's "protected health information."</p>	<p>An agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.</p> <p>An agent under a HCP is considered the "personal representative" of the PWIDD under HIPAA and is granted full access to the PWIDD's "protected health information."</p> <p>The HCP can modify or restrict the agent's authority to make health care decisions The creation by the principal of written wishes or instructions about health care, or limitations upon the agent's authority, will not revoke a HCP unless such wishes, instructions or limitations expressly provide otherwise.</p> <p>Such wishes, instructions or limitations will constitute evidence of the principal's wishes for purposes of governing the decisions of the agent.</p> <p>Such wishes, instructions or limitations are often included as part of the written text of the HCP to serve the function of a "living will."</p>	<p>If a Statutory Short Form POA includes some or all of the fourteen phrases which are defined in full in the statute, the POA will incorporate the full text of the statutory language by reference without having to set it forth the powers in full.</p> <p>The range of powers covered by the statute span financial, tax, insurance and banking transactions as well as business dealings and involvement with any type of dispute, litigation or property</p> <p>Generally, the principal will sign a "durable" POA which means that it will not be revoked or terminated by the subsequent "incapacity" of the principal</p> <p>The State of New York has drafted the form of a POA called a "Statutory Short Form POA." If the prescribed Statutory Short Form POA is used, financial institutions doing business in New York cannot reject the form without "reasonable cause."</p> <p>In other words; a financial institution must accept the Statutory Short Form POA and cannot insist upon the use of its own unique form in its dealings,</p> <p>Unless the principal signs a "Statutory Gifts Rider," the agent cannot make gifts of the principal's property in excess of \$500 in the aggregate in each calendar year.</p>

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Standard to exercise Authority	The 17-A Guardian must base all advocacy and health care decision-making solely and exclusively: (i) on the “best interests” of the PWIDD; and (ii) when reasonably known or ascertainable with reasonable diligence, on the PWIDD’s wishes, including moral and religious beliefs.	<p>Before making a health care decision, the agent must consult with an appropriate health care professional.</p> <p>The agent must make health care decisions: (i) in accordance with the principal's wishes, including the principal's religious and moral beliefs; or (ii) if the principal's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal's “best interests.”</p>	<p>In dealing with property of the principal, an agent must observe the standard of care that would be observed by a “prudent person” dealing with property of another.</p> <p>The agent is in a fiduciary relationship with the principal and has the duty: (i) to act according to any instructions from the principal or, (ii) where there are no instructions, in the “best interest” of the principal.</p> <p>The agent has the affirmative duty to avoid any conflict of interest and must not commingle the principal’s money and property with his or her own money or property.</p>
Commencement of Authority	Guardian’s authority to act commences on the date of the Court Order and continues until the death of either the Guardian or PWIDD or the Court orders a termination.	Agent’s authority commences upon a the written finding of the attending physician that the principal lacked “capacity to make health care decisions.”	Agent’s authority commences on the date the POA is signed by both the principal and agent.
Termination of Authority	<p>The Surrogate’s Court retains general jurisdiction over the PWIDD for whom a Guardian has been appointed, even after the date of the Order of appointment.</p> <p>The Court may modify, dissolve or otherwise amend the Order granting Guardianship, or it may discharge a Guardian and name a successor Guardian.</p>	The agent’s authority continues until the principal revokes the HCP, executes a new HCP, or upon the death of the agent or the principal.	The POA remains valid until the death of the principal or the agent or until the principal revokes the POA..