

7151

I N S E N A T E

May 1, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to making technical, minor and coordinating amendments regarding health care agents and proxies, decisions under the family health care decisions act, and non-hospital orders not to resuscitate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 4 and 10 of section 2980 of the public health
2 law, subdivision 4 as added by chapter 752 of the laws of 1990, subdivi-
3 sion 10 as amended by chapter 23 of the laws of 1994, are amended and a
4 new subdivision 8-a is added to read as follows:

5 4. "Health care" means any treatment, service or procedure to diagnose
6 or treat an individual's physical or mental condition. PROVIDING NUTRI-
7 TION OR HYDRATION ORALLY, WITHOUT RELIANCE ON MEDICAL TREATMENT, IS NOT
8 HEALTH CARE UNDER THIS ARTICLE AND IS NOT SUBJECT TO THIS ARTICLE.

9 8-A. "HEALTH OR SOCIAL SERVICES PRACTITIONER" MEANS A REGISTERED
10 PROFESSIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
11 PSYCHOLOGIST, LICENSED MASTER SOCIAL WORKER OR LICENSED CLINICAL SOCIAL
12 WORKER, LICENSED OR CERTIFIED PURSUANT TO THE EDUCATION LAW ACTING WITH-
13 IN HIS OR HER SCOPE OF PRACTICE.

14 10. "Mental hygiene facility" means a residential facility, excluding
15 family care homes, operated or licensed by the office of mental health
16 or the office [of mental retardation and] FOR PEOPLE WITH developmental
17 disabilities.

18 S 2. Paragraph (b) of subdivision 1 of section 2981 of the public
19 health law, as added by chapter 752 of the laws of 1990, is amended to
20 read as follows:

21 (b) For the purposes of this section, every adult shall be presumed
22 competent to appoint a health care agent unless such person has been
23 adjudged incompetent or otherwise adjudged not competent to appoint a
24 health care agent, or unless a [committee or] guardian of the person has
25 been appointed for the adult pursuant to article [seventy-eight] EIGHT-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 Y-ONE of the mental hygiene law or article seventeen-A of the surro-
2 gate's court procedure act.

3 S 3. Subdivision 2 of section 2982 of the public health law, as
4 amended by chapter 230 of the laws of 2004, is amended to read as
5 follows:

6 2. Decision-making standard. After consultation with a licensed physi-
7 cian, registered nurse, PHYSICIAN ASSISTANT, licensed psychologist,
8 licensed master social worker, or a licensed clinical social worker, the
9 agent shall make health care decisions: (a) in accordance with the prin-
10 cipal's wishes, including the principal's religious and moral beliefs;
11 or (b) if the principal's wishes are not reasonably known and cannot
12 with reasonable diligence be ascertained, in accordance with the princi-
13 pal's best interests; provided, however, that if the principal's wishes
14 regarding the administration of artificial nutrition and hydration are
15 not reasonably known and cannot with reasonable diligence be ascer-
16 tained, the agent shall not have the authority to make decisions regard-
17 ing these measures.

18 S 4. Subdivision 3 of section 2983 of the public health law, as added
19 by chapter 752 of the laws of 1990, is amended to read as follows:

20 3. Notice of determination. Notice of a determination that a principal
21 lacks capacity to make health care decisions shall promptly be given:
22 (a) to the principal, orally and in writing, where there is any indi-
23 cation of the principal's ability to comprehend such notice; (b) to the
24 agent; AND (c) if the principal is in or is transferred from a mental
25 hygiene facility, to the facility director[; and (d) to the conservator
26 for, or committee of, the principal].

27 S 5. Subdivision 2 of section 2991 of the public health law, as added
28 by chapter 752 of the laws of 1990, is amended to read as follows:

29 2. Such procedures shall be established in accordance with regulations
30 issued by the commissioners of health, mental health, and [mental retar-
31 dation and] developmental disabilities for facilities subject to their
32 respective regulatory authorities.

33 S 6. The opening paragraph of section 2992 of the public health law,
34 as added by chapter 752 of the laws of 1990, is amended to read as
35 follows:

36 The health care provider, the [conservator for, or committee] GUARDIAN
37 of the principal UNDER ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW OR
38 ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT, members of
39 the principal's family, a close friend of the principal as defined in
40 subdivision [five] FOUR of section [two thousand nine] TWENTY-NINE
41 hundred [sixty-one] NINETY-FOUR-A of this chapter, or the commissioner
42 [of health], THE COMMISSIONER OF mental health, or [mental retardation
43 and] THE COMMISSIONER OF developmental disabilities may commence a
44 special proceeding pursuant to article four of the civil practice law
45 and rules, in a court of competent jurisdiction, with respect to any
46 dispute arising under this article, including, but not limited to, a
47 proceeding to:

48 S 7. Section 2993 of the public health law, as added by chapter 752 of
49 the laws of 1990, is amended to read as follows:

50 S 2993. Regulations. The commissioner [of health], in consultation
51 with the commissioners of [the office of] mental health and [the office
52 of mental retardation and] developmental disabilities, shall establish
53 such regulations as may be necessary for the implementation of this
54 article, subject to the provisions of subdivision two of section [two
55 thousand nine] TWENTY-NINE hundred ninety-one of this article.

1 S 8. Subdivisions 17, 20 and 26 of section 2994-a of the public health
2 law, as added by chapter 8 of the laws of 2010, are amended to read as
3 follows:

4 17. "Health or social [service] SERVICES practitioner" means a regis-
5 tered professional nurse, nurse practitioner, physician, physician
6 assistant, psychologist, LICENSED MASTER SOCIAL WORKER or licensed clin-
7 ical social worker, licensed or certified pursuant to the education law
8 acting within his or her scope of practice.

9 20. "Mental hygiene facility" means a facility operated or licensed by
10 the office of mental health or the office [of mental retardation and]
11 FOR PEOPLE WITH developmental disabilities as defined in subdivision six
12 of section 1.03 of the mental hygiene law.

13 26. "Person connected with the case" means the patient, any person on
14 the surrogate list, a parent or guardian of a minor patient, [the] A
15 hospital administrator, an attending physician, any other health or
16 social services practitioner who is or has been directly involved in the
17 patient's care, and any duly authorized state agency, including the
18 facility director or regional director for a patient transferred from a
19 mental hygiene facility and the facility director for a patient trans-
20 ferred from a correctional facility.

21 S 9. The opening paragraph and paragraph (a) of subdivision 3 of
22 section 2994-b of the public health law, as added by chapter 8 of the
23 laws of 2010, are amended to read as follows:

24 Prior to seeking or relying upon a health care decision by a surrogate
25 for a patient under this article, if the attending physician has reason
26 to believe that the patient has a history of receiving services for
27 [mental retardation or] a developmental disability; it reasonably
28 appears to the attending physician that the patient has [mental retarda-
29 tion or] a developmental disability; or the attending physician has
30 reason to believe that the patient has been transferred from a mental
31 hygiene facility operated or licensed by the office of mental health,
32 then such physician shall make reasonable efforts to determine whether
33 paragraphs (a), (b) or (c) of this subdivision are applicable:

34 (a) If the patient has a guardian appointed by a court pursuant to
35 article seventeen-A of the surrogate's court procedure act, health care
36 decisions for the patient shall be governed by section seventeen hundred
37 fifty-b of the surrogate's court [procedure] PROCEDURE act and not by
38 this article.

39 S 10. Paragraph (b) of subdivision 3 of section 2994-e of the public
40 health law, as added by chapter 8 of the laws of 2010, is amended to
41 read as follows:

42 (b) If the hospital can with reasonable efforts ascertain the identity
43 of the parents or guardian of an emancipated minor patient, the hospital
44 shall MAKE DILIGENT EFFORTS TO notify such persons prior to withholding
45 or withdrawing life-sustaining treatment pursuant to this subdivision.

46 S 11. Subparagraph (iv) of paragraph (b) of subdivision 4 of section
47 2994-m of the public health law, as added by chapter 8 of the laws of
48 2010, is amended to read as follows:

49 (iv) Following ethics review committee consideration of a case
50 concerning the withdrawal or withholding of life-sustaining treatment,
51 treatment shall not be withdrawn or withheld until THE HOSPITAL MAKES
52 DILIGENT EFFORTS TO INFORM the persons identified in subparagraph (iii)
53 of this paragraph [have been informed] of the committee's response to
54 the case.

55 S 12. Subdivision 2 of section 2994-t of the public health law, as
56 added by chapter 8 of the laws of 2010, is amended to read as follows:

2. The commissioner, in consultation with the commissioners of [the office of] mental health and [the office of mental retardation and] developmental disabilities, shall promulgate regulations identifying the credentials of health care professionals qualified to provide an independent determination, pursuant to subdivision three of section twenty-nine hundred ninety-four-c of this article, that a patient lacks decision-making capacity because of mental illness or developmental disability.

S 13. Section 2994-u of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

S 2994-u. Rights to be publicized. The commissioner shall prepare a statement summarizing the rights, duties, and requirements of this article and shall require that a copy of such statement be furnished to [patients] A PATIENT or to [persons on] the surrogate [list known to the hospital], or to the [parents or guardians] PARENT OR GUARDIAN of A minor [patients] PATIENT, at or prior to admission to the hospital, or within a reasonable time thereafter, and to [each member of the hospital's staff directly involved with patient care] ANY PERSON ON THE SURROGATE LIST WHO REQUESTS A COPY OF SUCH STATEMENT FROM THE HOSPITAL. THE STATEMENT SHALL ALSO BE MADE AVAILABLE TO THE HOSPITAL CLINICAL STAFF.

S 14. The commissioner of health shall revise the statement of rights that hospitals are required to post (known as the Patient's Bill of Rights) pursuant to paragraph (g) of subdivision 1 of section 2803 of the public health law, by replacing the clause regarding orders not to resuscitate with a statement that more generally informs patients of their right to receive from the hospital upon admission, and upon request, a more complete statement of their rights with respect to deciding about health care, including appointing a health care agent, consenting to do-not-resuscitate orders and making other life-sustaining treatment decisions. The clause should also state in substance that the hospital will also provide such statement upon request to any family member or friend of a patient who lacks decision-making capacity.

S 15. Subdivisions 12 and 13 of section 2994-aa of the public health law, subdivision 12 as added by chapter 8 of the laws of 2010 and subdivision 13 as amended by chapter 167 of the laws of 2011, are amended and a new subdivision 14-a is added to read as follows:

12. "Mental hygiene facility" means a residential facility operated or licensed by the office of mental health [or the office of mental retardation and developmental disabilities].

13. "Nonhospital order not to resuscitate" means an order that directs emergency medical services personnel, hospice personnel, HOME CARE SERVICES AGENCY PERSONNEL, SCHOOL HEALTH PERSONNEL, and hospital emergency services personnel not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest.

14-A. "SCHOOL HEALTH PERSONNEL" MEANS A SCHOOL-BASED PHYSICIAN, NURSE, PHYSICIAN ASSISTANT OR NURSE PRACTITIONER.

S 16. Paragraph (a) of subdivision 1 of section 2994-bb of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

(a) Emergency medical services personnel, home care services agency personnel, hospice personnel, SCHOOL HEALTH PERSONNEL, and hospital emergency services personnel shall honor nonhospital orders not to resuscitate, except as provided in section twenty-nine hundred ninety-four-ee of this article.

1 S 17. Subdivisions 2 and 6 of section 2994-dd of the public health
2 law, subdivision 2 as added by chapter 8 of the laws of 2010 and subdi-
3 vision 6 as amended by section 10 of part J of chapter 56 of the laws of
4 2012, are amended to read as follows:

5 2. A nonhospital order not to resuscitate shall be issued upon a stan-
6 dard form prescribed by the commissioner. [The commissioner shall also
7 develop a] A standard bracelet [that] OR OTHER ARTICLE may be worn by a
8 patient with a nonhospital order not to resuscitate to identify that
9 status; provided, however, that no person may require a patient to wear
10 such a bracelet OR OTHER ARTICLE and that no person may require a
11 patient to wear such a bracelet OR OTHER ARTICLE as a condition for
12 honoring a nonhospital order not to resuscitate or for providing health
13 care services.

14 6. The commissioner may authorize the use of one or more alternative
15 forms for issuing a nonhospital order not to resuscitate (in place of
16 the standard form prescribed by the commissioner under subdivision two
17 of this section). Such alternative form or forms may also be used to
18 issue a non-hospital do not intubate order. Any such alternative forms
19 intended for use for persons with developmental disabilities or persons
20 with mental illness who are incapable of making their own health care
21 decisions or who have a guardian of the person appointed pursuant to
22 article eighty-one of the mental hygiene law or article seventeen-A of
23 the surrogate's court procedure act must also be approved by the commis-
24 sioner of developmental disabilities or the commissioner of mental
25 health, as appropriate. An alternative form under this subdivision shall
26 otherwise conform with applicable federal and state law. This subdivi-
27 sion does not limit, restrict or impair the use of an alternative form
28 for issuing an order not to resuscitate in a general hospital or resi-
29 dential health care facility under article twenty-eight of this chapter
30 or a hospital under subdivision ten of section 1.03 of the mental
31 hygiene law OR A DEVELOPMENTAL DISABILITIES SERVICES OFFICE UNDER
32 SECTION 13.17 OF THE MENTAL HYGIENE LAW.

33 S 18. Section 2994-gg of the public health law, as added by chapter 8
34 of the laws of 2010, is amended to read as follows:

35 S 2994-gg. Immunity. No person shall be subjected to criminal prose-
36 cution or civil liability, or be deemed to have engaged in unprofes-
37 sional conduct, for honoring reasonably and in good faith pursuant to
38 this [section] ARTICLE a nonhospital order not to resuscitate, for
39 disregarding a nonhospital order pursuant to section twenty-nine hundred
40 ninety-four-ee of this article, or for other actions taken reasonably
41 and in good faith pursuant to this [section] ARTICLE.

42 S 19. This act shall take effect on the ninetieth day after it shall
43 have become a law, provided that the amendments to article 29-C of the
44 public health law shall apply to decisions made pursuant to health care
45 proxies created prior to the effective date of this act as well as those
46 created thereafter.