

STATE OF NEW YORK

1869--A

Cal. No. 644

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IN SENATE

January 11, 2017

Introduced by Sens. HANNON, AKSHAR, HAMILTON, LARKIN, LATIMER, VALESKY
-- read twice and ordered printed, and when printed to be committed to
the Committee on Health -- reported favorably from said committee,
ordered to first and second report, ordered to a third reading,
amended and ordered reprinted, retaining its place in the order of
third reading

AN ACT to amend the public health law, in relation to authorizing nurse
practitioners to execute orders not to resuscitate and orders pertain-
ing to life sustaining treatments

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 2960 of the public health law, as added by chapter
2 818 of the laws of 1987, is amended to read as follows:

3 § 2960. Legislative findings and purpose. The legislature finds that,
4 although cardiopulmonary resuscitation has proved invaluable in the
5 prevention of sudden, unexpected death, it is appropriate for an attend-
6 ing physician or attending nurse practitioner, in certain circumstances,
7 to issue an order not to attempt cardiopulmonary resuscitation of a
8 patient where appropriate consent has been obtained. The legislature
9 further finds that there is a need to clarify and establish the rights
10 and obligations of patients, their families, and health care providers
11 regarding cardiopulmonary resuscitation and the issuance of orders not
12 to resuscitate.

13 § 2. Subdivisions 2, 5 and 20 of section 2961 of the public health
14 law, subdivisions 2 and 5 as amended by chapter 8 of the laws of 2010,
15 and subdivision 20 as added by chapter 818 of the laws of 1987 and as
16 renumbered by chapter 370 of the laws of 1991, are amended and two new
17 subdivisions 2-a and 16 are added to read as follows:

18 2. "Attending physician" means the physician selected by or assigned
19 to a patient in a hospital who has primary responsibility for the treat-
20 ment and care of the patient. Where more than one physician and/or nurse

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

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1 practitioner shares such responsibility, any such physician or nurse
2 practitioner may act as the attending physician or attending nurse prac-
3 itioner pursuant to this article.

4 2-a. "Attending nurse practitioner" means the nurse practitioner
5 selected by or assigned to a patient in a hospital who has primary
6 responsibility for the treatment and care of the patient. Where more
7 than one physician and/or nurse practitioner shares such responsibility,
8 any such physician or nurse practitioner may act as the attending physi-
9 cian or attending nurse practitioner pursuant to this article.

10 5. "Close friend" means any person, eighteen years of age or older,
11 who is a close friend of the patient, or relative of the patient (other
12 than a spouse, adult child, parent, brother or sister) who has main-
13 tained such regular contact with the patient as to be familiar with the
14 patient's activities, health, and religious or moral beliefs and who
15 presents a signed statement to that effect to the attending physician or
16 attending nurse practitioner.

17 16. "Nurse practitioner" means a nurse practitioner certified pursuant
18 to section sixty-nine hundred ten of the education law who is practicing
19 in accordance with subdivision three of section sixty-nine hundred two
20 of the education law.

21 20. "Reasonably available" means that a person to be contacted can be
22 contacted with diligent efforts by an attending physician, attending
23 nurse practitioner or another person acting on behalf of the attending
24 physician, attending nurse practitioner or the hospital.

25 § 3. Subdivisions 2 and 3 of section 2962 of the public health law, as
26 added by chapter 818 of the laws of 1987, are amended to read as
27 follows:

28 2. It shall be lawful for the attending physician or attending nurse
29 practitioner to issue an order not to resuscitate a patient, provided
30 that the order has been issued pursuant to the requirements of this
31 article. The order shall be included in writing in the patient's chart.
32 An order not to resuscitate shall be effective upon issuance.

33 3. Before obtaining, pursuant to this article, the consent of the
34 patient, or of the surrogate of the patient, or parent or legal guardian
35 of the minor patient, to an order not to resuscitate, the attending
36 physician or attending nurse practitioner shall provide to the person
37 giving consent information about the patient's diagnosis and prognosis,
38 the reasonably foreseeable risks and benefits of cardiopulmonary resus-
39 citation for the patient, and the consequences of an order not to resus-
40 citate.

41 § 4. Section 2963 of the public health law, as added by chapter 818 of
42 the laws of 1987, subdivision 1, paragraph (b) of subdivision 3 and
43 subdivision 4 as amended by chapter 8 of the laws of 2010, paragraph (c)
44 of subdivision 3 as amended by section 5 of part J of chapter 56 of the
45 laws of 2012, is amended to read as follows:

46 § 2963. Determination of capacity to make a decision regarding
47 cardiopulmonary resuscitation. 1. Every adult shall be presumed to have
48 the capacity to make a decision regarding cardiopulmonary resuscitation
49 unless determined otherwise pursuant to this section or pursuant to a
50 court order or unless a guardian is authorized to decide about health
51 care for the adult pursuant to article eighty-one of the mental hygiene
52 law or article seventeen-A of the surrogate's court procedure act. The
53 attending physician or attending nurse practitioner shall not rely on
54 the presumption stated in this subdivision if clinical indicia of inca-
55 pacity are present.

1 2. A determination that an adult patient lacks capacity shall be made
2 by the attending physician or attending nurse practitioner to a reason-
3 able degree of medical certainty. The determination shall be made in
4 writing and shall contain such attending physician's or attending nurse
5 practitioner's opinion regarding the cause and nature of the patient's
6 incapacity as well as its extent and probable duration. The determi-
7 nation shall be included in the patient's medical chart.

8 3. (a) At least one other physician, selected by a person authorized
9 by the hospital to make such selection, must concur in the determination
10 that an adult lacks capacity. The concurring determination shall be made
11 in writing after personal examination of the patient and shall contain
12 the physician's opinion regarding the cause and nature of the patient's
13 incapacity as well as its extent and probable duration. Each concurring
14 determination shall be included in the patient's medical chart.

15 (b) If the attending physician or attending nurse practitioner deter-
16 mines that a patient lacks capacity because of mental illness, the
17 concurring determination required by paragraph (a) of this subdivision
18 shall be provided by a physician licensed to practice medicine in New
19 York state, who is a diplomate or eligible to be certified by the Ameri-
20 can Board of Psychiatry and Neurology or who is certified by the Ameri-
21 can Osteopathic Board of Neurology and Psychiatry or is eligible to be
22 certified by that board.

23 (c) If the attending physician or attending nurse practitioner deter-
24 mines that a patient lacks capacity because of a developmental disabili-
25 ty, the concurring determination required by paragraph (a) of this
26 subdivision shall be provided by a physician or psychologist employed by
27 a developmental disabilities services office named in section 13.17 of
28 the mental hygiene law, or who has been employed for a minimum of two
29 years to render care and service in a facility operated or licensed by
30 the office for people with developmental disabilities, or who has been
31 approved by the commissioner of developmental disabilities in accordance
32 with regulations promulgated by such commissioner. Such regulations
33 shall require that a physician or psychologist possess specialized
34 training or three years experience in treating developmental disabili-
35 ties.

36 4. Notice of a determination that the patient lacks capacity shall
37 promptly be given (a) to the patient, where there is any indication of
38 the patient's ability to comprehend such notice, together with a copy of
39 a statement prepared in accordance with section twenty-nine hundred
40 seventy-eight of this article, and (b) to the person on the surrogate
41 list highest in order of priority listed, when persons in prior subpara-
42 graphs are not reasonably available. Nothing in this subdivision shall
43 preclude or require notice to more than one person on the surrogate
44 list.

45 5. A determination that a patient lacks capacity to make a decision
46 regarding an order not to resuscitate pursuant to this section shall not
47 be construed as a finding that the patient lacks capacity for any other
48 purpose.

49 § 5. Subdivision 2 of section 2964 of the public health law, as added
50 by chapter 818 of the laws of 1987, is amended to read as follows:

51 2. (a) During hospitalization, an adult with capacity may express a
52 decision consenting to an order not to resuscitate orally in the pres-
53 ence of at least two witnesses eighteen years of age or older, one of
54 whom is a physician or nurse practitioner affiliated with the hospital
55 in which the patient is being treated. Any such decision shall be
56 recorded in the patient's medical chart.

1 (b) Prior to or during hospitalization, an adult with capacity may
2 express a decision consenting to an order not to resuscitate in writing,
3 dated and signed in the presence of at least two witnesses eighteen
4 years of age or older who shall sign the decision.

5 (c) An attending physician or attending nurse practitioner who is
6 provided with or informed of a decision pursuant to this subdivision
7 shall record or include the decision in the patient's medical chart if
8 the decision has not been recorded or included, and either:

9 (i) promptly issue an order not to resuscitate the patient or issue an
10 order at such time as the conditions, if any, specified in the decision
11 are met, and inform the hospital staff responsible for the patient's
12 care of the order; or

13 (ii) promptly make his or her objection to the issuance of such an
14 order and the reasons therefor known to the patient and either make all
15 reasonable efforts to arrange for the transfer of the patient to another
16 physician or nurse practitioner, if necessary, or promptly submit the
17 matter to the dispute mediation system.

18 (d) Prior to issuing an order not to resuscitate a patient who has
19 expressed a decision consenting to an order not to resuscitate under
20 specified medical conditions, the attending physician or attending nurse
21 practitioner must make a determination, to a reasonable degree of
22 medical certainty, that such conditions exist, and include the determi-
23 nation in the patient's medical chart.

24 § 6. Subdivision 5 of section 2964 of the public health law is renu-
25 mbered subdivision 3.

26 § 7. Subdivisions 3 and 4 of section 2965 of the public health law, as
27 added by chapter 818 of the laws of 1987 and as renumbered by chapter
28 370 of the laws of 1991, paragraph (a) of subdivision 4 as amended by
29 chapter 370 of the laws of 1991 and paragraph (c) of subdivision 4 as
30 amended by chapter 8 of the laws of 2010, are amended to read as
31 follows:

32 3. (a) The surrogate shall make a decision regarding cardiopulmonary
33 resuscitation on the basis of the adult patient's wishes including a
34 consideration of the patient's religious and moral beliefs, or, if the
35 patient's wishes are unknown and cannot be ascertained, on the basis of
36 the patient's best interests.

37 (b) Notwithstanding any law to the contrary, the surrogate shall have
38 the same right as the patient to receive medical information and medical
39 records.

40 (c) A surrogate may consent to an order not to resuscitate on behalf
41 of an adult patient only if there has been a determination by an attend-
42 ing physician or attending nurse practitioner with the concurrence of
43 another physician or nurse practitioner selected by a person authorized
44 by the hospital to make such selection, given after personal examination
45 of the patient that, to a reasonable degree of medical certainty:

46 (i) the patient has a terminal condition; or

47 (ii) the patient is permanently unconscious; or

48 (iii) resuscitation would be medically futile; or

49 (iv) resuscitation would impose an extraordinary burden on the patient
50 in light of the patient's medical condition and the expected outcome of
51 resuscitation for the patient.

52 Each determination shall be included in the patient's medical chart.

53 4. (a) A surrogate shall express a decision consenting to an order not
54 to resuscitate either (i) in writing, dated, and signed in the presence
55 of one witness eighteen years of age or older who shall sign the deci-
56 sion, or (ii) orally, to two persons eighteen years of age or older, one

1 of whom is a physician or nurse practitioner affiliated with the hospi-
2 tal in which the patient is being treated. Any such decision shall be
3 recorded in the patient's medical chart.

4 (b) The attending physician or attending nurse practitioner who is
5 provided with the decision of a surrogate shall include the decision in
6 the patient's medical chart and, if the surrogate has consented to the
7 issuance of an order not to resuscitate, shall either:

8 (i) promptly issue an order not to resuscitate the patient and inform
9 the hospital staff responsible for the patient's care of the order; or

10 (ii) promptly make the attending physician's or attending nurse prac-
11 titioner's objection to the issuance of such an order known to the
12 surrogate and either make all reasonable efforts to arrange for the
13 transfer of the patient to another physician or nurse practitioner, if
14 necessary, or promptly refer the matter to the dispute mediation system.

15 (c) If the attending physician or attending nurse practitioner has
16 actual notice of opposition to a surrogate's consent to an order not to
17 resuscitate by any person on the surrogate list, the physician or nurse
18 practitioner shall submit the matter to the dispute mediation system and
19 such order shall not be issued or shall be revoked in accordance with
20 the provisions of subdivision three of section twenty-nine hundred
21 seventy-two of this article.

22 § 8. Section 2966 of the public health law, as added by chapter 818 of
23 the laws of 1987, subdivision 3 as amended by chapter 8 of the laws of
24 2010, is amended to read as follows:

25 § 2966. Decision-making on behalf of an adult patient without capacity
26 for whom no surrogate is available. 1. If no surrogate is reasonably
27 available, willing to make a decision regarding issuance of an order not
28 to resuscitate, and competent to make a decision regarding issuance of
29 an order not to resuscitate on behalf of an adult patient who lacks
30 capacity and who had not previously expressed a decision regarding
31 cardiopulmonary resuscitation, an attending physician or attending nurse
32 practitioner (a) may issue an order not to resuscitate the patient,
33 provided that the attending physician or attending nurse practitioner
34 determines, in writing, that, to a reasonable degree of medical certain-
35 ty, resuscitation would be medically futile, and another physician or
36 nurse practitioner selected by a person authorized by the hospital to
37 make such selection, after personal examination of the patient, reviews
38 and concurs in writing with such determination, or, (b) shall issue an
39 order not to resuscitate the patient, provided that, pursuant to subdi-
40 vision one of section twenty-nine hundred seventy-six of this article, a
41 court has granted a judgment directing the issuance of such an order.

42 [3] 2. Notwithstanding any other provision of this section, where a
43 decision to consent to an order not to resuscitate has been made, notice
44 of the decision shall be given to the patient where there is any indi-
45 cation of the patient's ability to comprehend such notice. If the
46 patient objects, an order not to resuscitate shall not be issued.

47 § 9. Section 2967 of the public health law, as added by chapter 818 of
48 the laws of 1987, paragraph (b) of subdivision 2, subdivision 3 and
49 paragraphs (a) and (b) of subdivision 4 as amended by chapter 370 of the
50 laws of 1991, is amended to read as follows:

51 § 2967. Decision-making on behalf of a minor patient. 1. An attending
52 physician or attending nurse practitioner, in consultation with a
53 minor's parent or legal guardian, shall determine whether a minor has
54 the capacity to make a decision regarding resuscitation.

1 2. (a) The consent of a minor's parent or legal guardian and the
2 consent of the minor, if the minor has capacity, must be obtained prior
3 to issuing an order not to resuscitate the minor.

4 (b) Where the attending physician or attending nurse practitioner has
5 reason to believe that there is another parent or a non-custodial parent
6 who has not been informed of a decision to issue an order not to resus-
7 citate the minor, the attending physician or attending nurse practition-
8 er, or someone acting on behalf of the attending physician or attending
9 nurse practitioner, shall make reasonable efforts to determine if the
10 uninformed parent or non-custodial parent has maintained substantial and
11 continuous contact with the minor and, if so, shall make diligent
12 efforts to notify that parent or non-custodial parent of the decision
13 prior to issuing the order.

14 3. A parent or legal guardian may consent to an order not to resusci-
15 tate on behalf of a minor only if there has been a written determination
16 by the attending physician or attending nurse practitioner, with the
17 written concurrence of another physician or nurse practitioner selected
18 by a person authorized by the hospital to make such selections given
19 after personal examination of the patient, that, to a reasonable degree
20 of medical certainty, the minor suffers from one of the medical condi-
21 tions set forth in paragraph (c) of subdivision three of section twen-
22 ty-nine hundred sixty-five of this article. Each determination shall be
23 included in the patient's medical chart.

24 4. (a) A parent or legal guardian of a minor, in making a decision
25 regarding cardiopulmonary resuscitation, shall consider the minor
26 patient's wishes, including a consideration of the minor patient's reli-
27 gious and moral beliefs, and shall express a decision consenting to
28 issuance of an order not to resuscitate either (i) in writing, dated and
29 signed in the presence of one witness eighteen years of age or older who
30 shall sign the decision, or (ii) orally, to two persons eighteen years
31 of age or older, one of whom is a physician or nurse practitioner affil-
32 iated with the hospital in which the patient is being treated. Any such
33 decision shall be recorded in the patient's medical chart.

34 (b) The attending physician or attending nurse practitioner who is
35 provided with the decision of a minor's parent or legal guardian,
36 expressed pursuant to this subdivision, and of the minor if the minor
37 has capacity, shall include such decision or decisions in the minor's
38 medical chart and shall comply with the provisions of paragraph (b) of
39 subdivision four of section twenty-nine hundred sixty-five of this arti-
40 cle.

41 (c) If the attending physician or attending nurse practitioner has
42 actual notice of the opposition of a parent or non-custodial parent to
43 consent by another parent to an order not to resuscitate a minor, the
44 physician or nurse practitioner shall submit the matter to the dispute
45 mediation system and such order shall not be issued or shall be revoked
46 in accordance with the provisions of subdivision three of section twen-
47 ty-nine hundred seventy-two of this article.

48 § 10. Section 2969 of the public health law, as added by chapter 818
49 of the laws of 1987, subdivision 2 as amended by chapter 370 of the laws
50 of 1991, is amended to read as follows:

51 § 2969. Revocation of consent to order not to resuscitate. 1. A person
52 may, at any time, revoke his or her consent to an order not to resusci-
53 tate himself or herself by making either a written or an oral declara-
54 tion to a physician or member of the nursing staff at the hospital where
55 he or she is being treated, or by any other act evidencing a specific
56 intent to revoke such consent.

1 2. Any surrogate, parent, or legal guardian may at any time revoke his
2 or her consent to an order not to resuscitate a patient by (a) notifying
3 a physician or member of the nursing staff of the revocation of consent
4 in writing, dated and signed, or (b) orally notifying the attending
5 physician or attending nurse practitioner in the presence of a witness
6 eighteen years of age or older.

7 3. Any physician or nurse practitioner who is informed of or provided
8 with a revocation of consent pursuant to this section shall immediately
9 include the revocation in the patient's chart, cancel the order, and
10 notify the hospital staff responsible for the patient's care of the
11 revocation and cancellation. Any member of the nursing staff, other than
12 a nurse practitioner, who is informed of or provided with a revocation
13 of consent pursuant to this section shall immediately notify a physician
14 or nurse practitioner of such revocation.

15 § 11. Section 2970 of the public health law, as added by chapter 818
16 of the laws of 1987, subdivision 1 as amended by chapter 8 of the laws
17 of 2010, paragraph (b) of subdivision 2 as amended by chapter 370 of the
18 laws of 1991, is amended to read as follows:

19 § 2970. Physician and nurse practitioner review of the order not to
20 resuscitate. 1. For each patient for whom an order not to resuscitate
21 has been issued, the attending physician or attending nurse practitioner
22 shall review the patient's chart to determine if the order is still
23 appropriate in light of the patient's condition and shall indicate on
24 the patient's chart that the order has been reviewed each time the
25 patient is required to be seen by a physician but at least every sixty
26 days.

27 Failure to comply with this subdivision shall not render an order not
28 to resuscitate ineffective.

29 2. (a) If the attending physician or attending nurse practitioner
30 determines at any time that an order not to resuscitate is no longer
31 appropriate because the patient's medical condition has improved, the
32 physician or nurse practitioner shall immediately notify the person who
33 consented to the order. Except as provided in paragraph (b) of this
34 subdivision, if such person declines to revoke consent to the order, the
35 physician or nurse practitioner shall promptly (i) make reasonable
36 efforts to arrange for the transfer of the patient to another physician
37 or (ii) submit the matter to the dispute mediation system.

38 (b) If the order not to resuscitate was entered upon the consent of a
39 surrogate, parent, or legal guardian and the attending physician or
40 attending nurse practitioner who issued the order, or, if unavailable,
41 another attending physician or attending nurse practitioner at any time
42 determines that the patient does not suffer from one of the medical
43 conditions set forth in paragraph (c) of subdivision three of section
44 twenty-nine hundred sixty-five of this article, the attending physician
45 or attending nurse practitioner shall immediately include such determi-
46 nation in the patient's chart, cancel the order, and notify the person
47 who consented to the order and all hospital staff responsible for the
48 patient's care of the cancellation.

49 (c) If an order not to resuscitate was entered upon the consent of a
50 surrogate and the patient at any time gains or regains capacity, the
51 attending physician or attending nurse practitioner who issued the
52 order, or, if unavailable, another attending physician or attending
53 nurse practitioner shall immediately cancel the order and notify the
54 person who consented to the order and all hospital staff directly
55 responsible for the patient's care of the cancellation.

1 § 12. The opening paragraph and subdivision 2 of section 2971 of the
2 public health law, as amended by chapter 370 of the laws of 1991, are
3 amended to read as follows:

4 If a patient for whom an order not to resuscitate has been issued is
5 transferred from a hospital to a different hospital the order shall
6 remain effective, unless revoked pursuant to this article, until the
7 attending physician or attending nurse practitioner first examines the
8 transferred patient, whereupon the attending physician or attending
9 nurse practitioner must either:

10 2. Cancel the order not to resuscitate, provided the attending physi-
11 cian or attending nurse practitioner immediately notifies the person who
12 consented to the order and the hospital staff directly responsible for
13 the patient's care of the cancellation. Such cancellation does not
14 preclude the entry of a new order pursuant to this article.

15 § 13. Subdivisions 1, 2 and 4 of section 2972 of the public health
16 law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987,
17 paragraph (b) of subdivision 1 as amended by chapter 370 of the laws of
18 1991 and subdivision 2 as amended by chapter 8 of the laws of 2010, are
19 amended to read as follows:

20 1. (a) Each hospital shall establish a mediation system for the
21 purpose of mediating disputes regarding the issuance of orders not to
22 resuscitate.

23 (b) The dispute mediation system shall be described in writing and
24 adopted by the hospital's governing authority. It may utilize existing
25 hospital resources, such as a patient advocate's office or hospital
26 chaplain's office, or it may utilize a body created specifically for
27 this purpose, but, in the event a dispute involves a patient deemed to
28 lack capacity pursuant to (i) paragraph (b) of subdivision three of
29 section twenty-nine hundred sixty-three of this article, the system must
30 include a physician or nurse practitioner eligible to provide a concur-
31 ring determination pursuant to such subdivision, or a family member or
32 guardian of the person of a person with a mental illness of the same or
33 similar nature, or (ii) paragraph (c) of subdivision three of section
34 twenty-nine hundred sixty-three of this article, the system must include
35 a physician or nurse practitioner eligible to provide a concurring
36 determination pursuant to such subdivision, or a family member or guard-
37 ian of the person of a person with a developmental disability of the
38 same or similar nature.

39 2. The dispute mediation system shall be authorized to mediate any
40 dispute, including disputes regarding the determination of the patient's
41 capacity, arising under this article between the patient and an attend-
42 ing physician, attending nurse practitioner or the hospital that is
43 caring for the patient and, if the patient is a minor, the patient's
44 parent, or among an attending physician, an attending nurse
45 practitioner, a parent, non-custodial parent, or legal guardian of a
46 minor patient, any person on the surrogate list, and the hospital that
47 is caring for the patient.

48 4. If a dispute between a patient who expressed a decision rejecting
49 cardiopulmonary resuscitation and an attending physician, attending
50 nurse practitioner or the hospital that is caring for the patient is
51 submitted to the dispute mediation system, and either:

52 (a) the dispute mediation system has concluded its efforts to resolve
53 the dispute, or

54 (b) seventy-two hours have elapsed from the time of submission without
55 resolution of the dispute, whichever shall occur first, the attending
56 physician or attending nurse practitioner shall either: (i) promptly

1 issue an order not to resuscitate the patient or issue the order at such
2 time as the conditions, if any, specified in the decision are met, and
3 inform the hospital staff responsible for the patient's care of the
4 order; or (ii) promptly arrange for the transfer of the patient to
5 another physician, nurse practitioner or hospital.

6 § 14. Subdivision 1 of section 2973 of the public health law, as
7 amended by chapter 8 of the laws of 2010, is amended to read as follows:

8 1. The patient, an attending physician, attending nurse practitioner,
9 a parent, non-custodial parent, or legal guardian of a minor patient,
10 any person on the surrogate list, the hospital that is caring for the
11 patient and the facility director, may commence a special proceeding
12 pursuant to article four of the civil practice law and rules, in a court
13 of competent jurisdiction, with respect to any dispute arising under
14 this article, except that the decision of a patient not to consent to
15 issuance of an order not to resuscitate may not be subjected to judicial
16 review. In any proceeding brought pursuant to this subdivision challeng-
17 ing a decision regarding issuance of an order not to resuscitate on the
18 ground that the decision is contrary to the patient's wishes or best
19 interests, the person or entity challenging the decision must show, by
20 clear and convincing evidence, that the decision is contrary to the
21 patient's wishes including consideration of the patient's religious and
22 moral beliefs, or, in the absence of evidence of the patient's wishes,
23 that the decision is contrary to the patient's best interests. In any
24 other proceeding brought pursuant to this subdivision, the court shall
25 make its determination based upon the applicable substantive standards
26 and procedures set forth in this article.

27 § 15. Section 2976 of the public health law, as added by chapter 818
28 of the laws of 1987, is amended to read as follows:

29 § 2976. Judicially approved order not to resuscitate. 1. If no surro-
30 gate is reasonably available, willing to make a decision regarding issu-
31 ance of an order not to resuscitate, and competent to make a decision
32 regarding issuance of an order not to resuscitate on behalf of an adult
33 patient who lacks capacity and who had not previously expressed a deci-
34 sion regarding cardiopulmonary resuscitation pursuant to this article,
35 an attending physician or attending nurse practitioner or hospital may
36 commence a special proceeding pursuant to article four of the civil
37 practice law and rules, in a court of competent jurisdiction, for a
38 judgment directing the physician or nurse practitioner to issue an order
39 not to resuscitate where the patient has a terminal condition, is perma-
40 nently unconscious, or resuscitation would impose an extraordinary
41 burden on the patient in light of the patient's medical condition and
42 the expected outcome of resuscitation for the patient, and issuance of
43 an order not to resuscitate is consistent with the patient's wishes
44 including a consideration of the patient's religious and moral beliefs
45 or, in the absence of evidence of the patient's wishes, the patient's
46 best interests.

47 2. Nothing in this article shall be construed to preclude a court of
48 competent jurisdiction from approving the issuance of an order not to
49 resuscitate under circumstances other than those under which such an
50 order may be issued pursuant to this article.

51 § 16. Subdivisions 2 and 4 of section 2994-a of the public health law,
52 as added by chapter 8 of the laws of 2010, are amended and two new
53 subdivisions 2-a and 22-a are added to read as follows:

54 2. "Attending physician" means a physician, selected by or assigned to
55 a patient pursuant to hospital policy, who has primary responsibility
56 for the treatment and care of the patient. Where more than one physician

1 and/or nurse practitioner shares such responsibility, or where a physi-
2 cian or nurse practitioner is acting on the attending physician's or
3 attending nurse practitioner's behalf, any such physician or nurse prac-
4 titioner may act as an attending physician or attending nurse practi-
5 tioner pursuant to this article.

6 2-a. "Attending nurse practitioner" means a nurse practitioner,
7 selected by or assigned to a patient pursuant to hospital policy, who
8 has primary responsibility for the treatment and care of the patient.
9 Where more than one physician and/or nurse practitioner shares such
10 responsibility, or where a physician or nurse practitioner is acting on
11 the attending physician's or attending nurse practitioner's behalf, any
12 such physician or nurse practitioner may act as an attending physician
13 or attending nurse practitioner pursuant to this article.

14 4. "Close friend" means any person, eighteen years of age or older,
15 who is a close friend of the patient, or a relative of the patient
16 (other than a spouse, adult child, parent, brother or sister), who has
17 maintained such regular contact with the patient as to be familiar with
18 the patient's activities, health, and religious or moral beliefs, and
19 who presents a signed statement to that effect to the attending physi-
20 cian or attending nurse practitioner.

21 22-a. "Nurse practitioner" means a nurse practitioner certified pursu-
22 ant to section sixty-nine hundred ten of the education law who is prac-
23 ticing in accordance with subdivision three of section sixty-nine
24 hundred two of the education law.

25 § 17. Subdivisions 2 and 3 of section 2994-b of the public health law,
26 as added by chapter 8 of the laws of 2010, are amended to read as
27 follows:

28 2. Prior to seeking or relying upon a health care decision by a surro-
29 gate for a patient under this article, the attending physician or
30 attending nurse practitioner shall make reasonable efforts to determine
31 whether the patient has a health care agent appointed pursuant to arti-
32 cle twenty-nine-C of this chapter. If so, health care decisions for the
33 patient shall be governed by such article, and shall have priority over
34 decisions by any other person except the patient or as otherwise
35 provided in the health care proxy.

36 3. Prior to seeking or relying upon a health care decision by a surro-
37 gate for a patient under this article, if the attending physician or
38 attending nurse practitioner has reason to believe that the patient has
39 a history of receiving services for mental retardation or a develop-
40 mental disability; it reasonably appears to the attending physician or
41 attending nurse practitioner that the patient has mental retardation or
42 a developmental disability; or the attending physician or attending
43 nurse practitioner has reason to believe that the patient has been
44 transferred from a mental hygiene facility operated or licensed by the
45 office of mental health, then such physician or nurse practitioner shall
46 make reasonable efforts to determine whether paragraphs (a), (b) or (c)
47 of this subdivision are applicable:

48 (a) If the patient has a guardian appointed by a court pursuant to
49 article seventeen-A of the surrogate's court procedure act, health care
50 decisions for the patient shall be governed by section seventeen hundred
51 fifty-b of the surrogate's court [~~proceedure~~ procedure] act and not by
52 this article.

53 (b) If a patient does not have a guardian appointed by a court pursu-
54 ant to article seventeen-A of the surrogate's court procedure act but
55 falls within the class of persons described in paragraph (a) of subdivi-
56 sion one of section seventeen hundred fifty-b of such act, decisions to

1 withdraw or withhold life-sustaining treatment for the patient shall be
2 governed by section seventeen hundred fifty-b of the surrogate's court
3 procedure act and not by this article.

4 (c) If a health care decision for a patient cannot be made under para-
5 graphs (a) or (b) of this subdivision, but consent for the decision may
6 be provided pursuant to the mental hygiene law or regulations of the
7 office of mental health or the office [~~of mental retardation and~~] for
8 people with developmental disabilities, then the decision shall be
9 governed by such statute or regulations and not by this article.

10 § 18. Subdivisions 2, 3 and 7 of section 2994-c of the public health
11 law, as added by chapter 8 of the laws of 2010, paragraph (b) of subdi-
12 vision 3 as amended by chapter 167 of the laws of 2011 and subparagraph
13 (ii) of paragraph (c) of subdivision 3 as amended by section 8 of part J
14 of chapter 56 of the laws of 2012, are amended to read as follows:

15 2. Initial determination by attending physician or attending nurse
16 practitioner. An attending physician or attending nurse practitioner
17 shall make an initial determination that an adult patient lacks deci-
18 sion-making capacity to a reasonable degree of medical certainty. Such
19 determination shall include an assessment of the cause and extent of the
20 patient's incapacity and the likelihood that the patient will regain
21 decision-making capacity.

22 3. Concurring determinations. (a) An initial determination that a
23 patient lacks decision-making capacity shall be subject to a concurring
24 determination, independently made, where required by this subdivision. A
25 concurring determination shall include an assessment of the cause and
26 extent of the patient's incapacity and the likelihood that the patient
27 will regain decision-making capacity, and shall be included in the
28 patient's medical record. Hospitals shall adopt written policies identi-
29 fying the training and credentials of health or social services practi-
30 tioners qualified to provide concurring determinations of incapacity.

31 (b) (i) In a residential health care facility, a health or social
32 services practitioner employed by or otherwise formally affiliated with
33 the facility must independently determine whether an adult patient lacks
34 decision-making capacity.

35 (ii) In a general hospital a health or social services practitioner
36 employed by or otherwise formally affiliated with the facility must
37 independently determine whether an adult patient lacks decision-making
38 capacity if the surrogate's decision concerns the withdrawal or with-
39 holding of life-sustaining treatment.

40 (iii) With respect to decisions regarding hospice care for a patient
41 in a general hospital or residential health care facility, the health or
42 social services practitioner must be employed by or otherwise formally
43 affiliated with the general hospital or residential health care facili-
44 ty.

45 (c) (i) If the attending physician or attending nurse practitioner
46 makes an initial determination that a patient lacks decision-making
47 capacity because of mental illness, either such physician must have the
48 following qualifications, or another physician with the following quali-
49 fications must independently determine whether the patient lacks deci-
50 sion-making capacity: a physician licensed to practice medicine in New
51 York state, who is a diplomate or eligible to be certified by the Ameri-
52 can Board of Psychiatry and Neurology or who is certified by the Ameri-
53 can Osteopathic Board of Neurology and Psychiatry or is eligible to be
54 certified by that board. A record of such consultation shall be included
55 in the patient's medical record.

1 (ii) If the attending physician or attending nurse practitioner makes
2 an initial determination that a patient lacks decision-making capacity
3 because of a developmental disability, either such physician or nurse
4 practitioner must have the following qualifications, or another profes-
5 sional with the following qualifications must independently determine
6 whether the patient lacks decision-making capacity: a physician or clin-
7 ical psychologist who either is employed by a developmental disabilities
8 services office named in section 13.17 of the mental hygiene law, or who
9 has been employed for a minimum of two years to render care and service
10 in a facility operated or licensed by the office for people with devel-
11 opmental disabilities, or has been approved by the commissioner of
12 developmental disabilities in accordance with regulations promulgated by
13 such commissioner. Such regulations shall require that a physician or
14 clinical psychologist possess specialized training or three years expe-
15 rience in treating developmental disabilities. A record of such consul-
16 tation shall be included in the patient's medical record.

17 (d) If an attending physician or attending nurse practitioner has
18 determined that the patient lacks decision-making capacity and if the
19 health or social services practitioner consulted for a concurring deter-
20 mination disagrees with the attending physician's or the attending nurse
21 practitioner's determination, the matter shall be referred to the ethics
22 review committee if it cannot otherwise be resolved.

23 7. Confirmation of continued lack of decision-making capacity. An
24 attending physician or attending nurse practitioner shall confirm the
25 adult patient's continued lack of decision-making capacity before
26 complying with health care decisions made pursuant to this article,
27 other than those decisions made at or about the time of the initial
28 determination. A concurring determination of the patient's continued
29 lack of decision-making capacity shall be required if the subsequent
30 health care decision concerns the withholding or withdrawal of life-sus-
31 taining treatment. Health care providers shall not be required to inform
32 the patient or surrogate of the confirmation.

33 § 19. Subdivisions 2, 3 and 5 of section 2994-d of the public health
34 law, as added by chapter 8 of the laws of 2010, the subdivision heading
35 and the opening paragraph of subdivision 5 as amended by chapter 167 of
36 the laws of 2011, are amended to read as follows:

37 2. Restrictions on who may be a surrogate. An operator, administrator,
38 or employee of a hospital or a mental hygiene facility from which the
39 patient was transferred, or a physician or nurse practitioner who has
40 privileges at the hospital or a health care provider under contract with
41 the hospital may not serve as the surrogate for any adult who is a
42 patient of such hospital, unless such individual is related to the
43 patient by blood, marriage, domestic partnership, or adoption, or is a
44 close friend of the patient whose friendship with the patient preceded
45 the patient's admission to the facility. If a physician or nurse practi-
46 tioner serves as surrogate, the physician or nurse practitioner shall
47 not act as the patient's attending physician or attending nurse practi-
48 tioner after his or her authority as surrogate begins.

49 3. Authority and duties of surrogate. (a) Scope of surrogate's author-
50 ity.

51 (i) Subject to the standards and limitations of this article, the
52 surrogate shall have the authority to make any and all health care deci-
53 sions on the adult patient's behalf that the patient could make.

54 (ii) Nothing in this article shall obligate health care providers to
55 seek the consent of a surrogate if an adult patient has already made a
56 decision about the proposed health care, expressed orally or in writing

1 or, with respect to a decision to withdraw or withhold life-sustaining
2 treatment expressed either orally during hospitalization in the presence
3 of two witnesses eighteen years of age or older, at least one of whom is
4 a health or social services practitioner affiliated with the hospital,
5 or in writing. If an attending physician or attending nurse practitioner
6 relies on the patient's prior decision, the physician or nurse practi-
7 tioner shall record the prior decision in the patient's medical record.
8 If a surrogate has already been designated for the patient, the attend-
9 ing physician or attending nurse practitioner shall make reasonable
10 efforts to notify the surrogate prior to implementing the decision;
11 provided that in the case of a decision to withdraw or withhold life-
12 sustaining treatment, the attending physician or attending nurse practi-
13 tioner shall make diligent efforts to notify the surrogate and, if
14 unable to notify the surrogate, shall document the efforts that were
15 made to do so.

16 (b) Commencement of surrogate's authority. The surrogate's authority
17 shall commence upon a determination, made pursuant to section twenty-
18 nine hundred ninety-four-c of this article, that the adult patient lacks
19 decision-making capacity and upon identification of a surrogate pursuant
20 to subdivision one of this section. In the event an attending physician
21 or nurse practitioner determines that the patient has regained deci-
22 sion-making capacity, the authority of the surrogate shall cease.

23 (c) Right and duty to be informed. Notwithstanding any law to the
24 contrary, the surrogate shall have the right to receive medical informa-
25 tion and medical records necessary to make informed decisions about the
26 patient's health care. Health care providers shall provide and the
27 surrogate shall seek information necessary to make an informed decision,
28 including information about the patient's diagnosis, prognosis, the
29 nature and consequences of proposed health care, and the benefits and
30 risks of and alternative to proposed health care.

31 5. Decisions to withhold or withdraw life-sustaining treatment. In
32 addition to the standards set forth in subdivision four of this section,
33 decisions by surrogates to withhold or withdraw life-sustaining treat-
34 ment (including decisions to accept a hospice plan of care that provides
35 for the withdrawal or withholding of life-sustaining treatment) shall be
36 authorized only if the following conditions are satisfied, as applica-
37 ble:

38 (a)(i) Treatment would be an extraordinary burden to the patient and
39 an attending physician or attending nurse practitioner determines, with
40 the independent concurrence of another physician or nurse practitioner,
41 that, to a reasonable degree of medical certainty and in accord with
42 accepted medical standards, (A) the patient has an illness or injury
43 which can be expected to cause death within six months, whether or not
44 treatment is provided; or (B) the patient is permanently unconscious; or

45 (ii) The provision of treatment would involve such pain, suffering or
46 other burden that it would reasonably be deemed inhumane or extraor-
47 dinarily burdensome under the circumstances and the patient has an irre-
48 versible or incurable condition, as determined by an attending physician
49 or attending nurse practitioner with the independent concurrence of
50 another physician or nurse practitioner to a reasonable degree of
51 medical certainty and in accord with accepted medical standards.

52 (b) In a residential health care facility, a surrogate shall have the
53 authority to refuse life-sustaining treatment under subparagraph (ii) of
54 paragraph (a) of this subdivision only if the ethics review committee,
55 including at least one physician or nurse practitioner who is not
56 directly responsible for the patient's care, or a court of competent

1 jurisdiction, reviews the decision and determines that it meets the
2 standards set forth in this article. This requirement shall not apply to
3 a decision to withhold cardiopulmonary resuscitation.

4 (c) In a general hospital, if the attending physician or attending
5 nurse practitioner objects to a surrogate's decision, under subparagraph
6 (ii) of paragraph (a) of this subdivision, to withdraw or withhold
7 nutrition and hydration provided by means of medical treatment, the
8 decision shall not be implemented until the ethics review committee,
9 including at least one physician or nurse practitioner who is not
10 directly responsible for the patient's care, or a court of competent
11 jurisdiction, reviews the decision and determines that it meets the
12 standards set forth in this subdivision and subdivision four of this
13 section.

14 (d) Providing nutrition and hydration orally, without reliance on
15 medical treatment, is not health care under this article and is not
16 subject to this article.

17 (e) Expression of decisions. The surrogate shall express a decision to
18 withdraw or withhold life-sustaining treatment either orally to an
19 attending physician or attending nurse practitioner or in writing.

20 § 20. Subdivisions 2 and 3 of section 2994-e of the public health law,
21 as added by chapter 8 of the laws of 2010, are amended to read as
22 follows:

23 2. Decision-making standards and procedures for minor patient. (a) The
24 parent or guardian of a minor patient shall make decisions in accordance
25 with the minor's best interests, consistent with the standards set forth
26 in subdivision four of section twenty-nine hundred ninety-four-d of this
27 article, taking into account the minor's wishes as appropriate under the
28 circumstances.

29 (b) An attending physician or attending nurse practitioner, in consul-
30 tation with a minor's parent or guardian, shall determine whether a
31 minor patient has decision-making capacity for a decision to withhold or
32 withdraw life-sustaining treatment. If the minor has such capacity, a
33 parent's or guardian's decision to withhold or withdraw life-sustaining
34 treatment for the minor may not be implemented without the minor's
35 consent.

36 (c) Where a parent or guardian of a minor patient has made a decision
37 to withhold or withdraw life-sustaining treatment and an attending
38 physician or attending nurse practitioner has reason to believe that the
39 minor patient has a parent or guardian who has not been informed of the
40 decision, including a non-custodial parent or guardian, an attending
41 physician, attending nurse practitioner or someone acting on his or her
42 behalf, shall make reasonable efforts to determine if the uninformed
43 parent or guardian has maintained substantial and continuous contact
44 with the minor and, if so, shall make diligent efforts to notify that
45 parent or guardian prior to implementing the decision.

46 3. Decision-making standards and procedures for emancipated minor
47 patient. (a) If an attending physician or attending nurse practitioner
48 determines that a patient is an emancipated minor patient with deci-
49 sion-making capacity, the patient shall have the authority to decide
50 about life-sustaining treatment. Such authority shall include a decision
51 to withhold or withdraw life-sustaining treatment if an attending physi-
52 cian or attending nurse practitioner and the ethics review committee
53 determine that the decision accords with the standards for surrogate
54 decisions for adults, and the ethics review committee approves the deci-
55 sion.

1 (b) If the hospital can with reasonable efforts ascertain the identity
2 of the parents or guardian of an emancipated minor patient, the hospital
3 shall notify such persons prior to withholding or withdrawing life-sus-
4 taining treatment pursuant to this subdivision.

5 § 21. Section 2994-f of the public health law, as added by chapter 8
6 of the laws of 2010, is amended to read as follows:

7 § 2994-f. Obligations of attending physician or attending nurse prac-
8 itioner. 1. An attending physician or attending nurse practitioner
9 informed of a decision to withdraw or withhold life-sustaining treatment
10 made pursuant to the standards of this article shall record the decision
11 in the patient's medical record, review the medical basis for the deci-
12 sion, and shall either: (a) implement the decision, or (b) promptly make
13 his or her objection to the decision and the reasons for the objection
14 known to the decision-maker, and either make all reasonable efforts to
15 arrange for the transfer of the patient to another physician or nurse
16 practitioner, if necessary, or promptly refer the matter to the ethics
17 review committee.

18 2. If an attending physician or attending nurse practitioner has actu-
19 al notice of the following objections or disagreements, he or she shall
20 promptly refer the matter to the ethics review committee if the
21 objection or disagreement cannot otherwise be resolved:

22 (a) A health or social services practitioner consulted for a concur-
23 ring determination that an adult patient lacks decision-making capacity
24 disagrees with the attending physician's or attending nurse practition-
25 er's determination; or

26 (b) Any person on the surrogate list objects to the designation of the
27 surrogate pursuant to subdivision one of section twenty-nine hundred
28 ninety-four-d of this article; or

29 (c) Any person on the surrogate list objects to a surrogate's deci-
30 sion; or

31 (d) A parent or guardian of a minor patient objects to the decision by
32 another parent or guardian of the minor; or

33 (e) A minor patient refuses life-sustaining treatment, and the minor's
34 parent or guardian wishes the treatment to be provided, or the minor
35 patient objects to an attending physician's or attending nurse practi-
36 tioner's determination about decision-making capacity or recommendation
37 about life-sustaining treatment.

38 3. Notwithstanding the provisions of this section or subdivision one
39 of section twenty-nine hundred ninety-four-q of this article, if a
40 surrogate directs the provision of life-sustaining treatment, the denial
41 of which in reasonable medical judgment would be likely to result in the
42 death of the patient, a hospital or individual health care provider that
43 does not wish to provide such treatment shall nonetheless comply with
44 the surrogate's decision pending either transfer of the patient to a
45 willing hospital or individual health care provider, or judicial review
46 in accordance with section twenty-nine hundred ninety-four-r of this
47 article.

48 § 22. Subdivisions 3,4,5, 5-a and 6 of section 2994-g of the public
49 health law, subdivisions 3, 4, 5 and 6 as added by chapter 8 of the laws
50 of 2010, subparagraph (iii) of paragraph (b) of subdivision 4 as amended
51 by chapter 167 of the laws of 2011 and subdivision 5-a as added by chap-
52 ter 107 of the laws of 2015, are amended to read as follows:

53 3. Routine medical treatment. (a) For purposes of this subdivision,
54 "routine medical treatment" means any treatment, service, or procedure
55 to diagnose or treat an individual's physical or mental condition, such
56 as the administration of medication, the extraction of bodily fluids for

1 analysis, or dental care performed with a local anesthetic, for which
2 health care providers ordinarily do not seek specific consent from the
3 patient or authorized representative. It shall not include the long-term
4 provision of treatment such as ventilator support or a nasogastric tube
5 but shall include such treatment when provided as part of post-operative
6 care or in response to an acute illness and recovery is reasonably
7 expected within one month or less.

8 (b) An attending physician or attending nurse practitioner shall be
9 authorized to decide about routine medical treatment for an adult
10 patient who has been determined to lack decision-making capacity pursu-
11 ant to section twenty-nine hundred ninety-four-c of this article. Noth-
12 ing in this subdivision shall require health care providers to obtain
13 specific consent for treatment where specific consent is not otherwise
14 required by law.

15 4. Major medical treatment. (a) For purposes of this subdivision,
16 "major medical treatment" means any treatment, service or procedure to
17 diagnose or treat an individual's physical or mental condition: (i)
18 where general anesthetic is used; or (ii) which involves any significant
19 risk; or (iii) which involves any significant invasion of bodily integ-
20 rity requiring an incision, producing substantial pain, discomfort,
21 debilitation or having a significant recovery period; or (iv) which
22 involves the use of physical restraints, as specified in regulations
23 promulgated by the commissioner, except in an emergency; or (v) which
24 involves the use of psychoactive medications, except when provided as
25 part of post-operative care or in response to an acute illness and
26 treatment is reasonably expected to be administered over a period of
27 forty-eight hours or less, or when provided in an emergency.

28 (b) A decision to provide major medical treatment, made in accordance
29 with the following requirements, shall be authorized for an adult
30 patient who has been determined to lack decision-making capacity pursu-
31 ant to section twenty-nine hundred ninety-four-c of this article.

32 (i) An attending physician or attending nurse practitioner shall make
33 a recommendation in consultation with hospital staff directly responsi-
34 ble for the patient's care.

35 (ii) In a general hospital, at least one other physician or nurse
36 practitioner designated by the hospital must independently determine
37 that he or she concurs that the recommendation is appropriate.

38 (iii) In a residential health care facility, and for a hospice patient
39 not in a general hospital, the medical director of the facility or
40 hospice, or a physician or nurse practitioner designated by the medical
41 director, must independently determine that he or she concurs that the
42 recommendation is appropriate; provided that if the medical director is
43 the patient's attending physician or attending nurse practitioner, a
44 different physician or nurse practitioner designated by the residential
45 health care facility or hospice must make this independent determi-
46 nation. Any health or social services practitioner employed by or other-
47 wise formally affiliated with the facility or hospice may provide a
48 second opinion for decisions about physical restraints made pursuant to
49 this subdivision.

50 5. Decisions to withhold or withdraw life-sustaining treatment. (a) A
51 court of competent jurisdiction may make a decision to withhold or with-
52 draw life-sustaining treatment for an adult patient who has been deter-
53 mined to lack decision-making capacity pursuant to section twenty-nine
54 hundred ninety-four-c of this article if the court finds that the deci-
55 sion accords with standards for decisions for adults set forth in subdi-

1 visions four and five of section twenty-nine hundred ninety-four-d of
2 this article.

3 (b) If the attending physician or attending nurse practitioner, with
4 independent concurrence of a second physician or nurse practitioner
5 designated by the hospital, determines to a reasonable degree of medical
6 certainty that:

7 (i) life-sustaining treatment offers the patient no medical benefit
8 because the patient will die imminently, even if the treatment is
9 provided; and

10 (ii) the provision of life-sustaining treatment would violate accepted
11 medical standards, then such treatment may be withdrawn or withheld from
12 an adult patient who has been determined to lack decision-making capaci-
13 ty pursuant to section twenty-nine hundred ninety-four-c of this arti-
14 cle, without judicial approval. This paragraph shall not apply to any
15 treatment necessary to alleviate pain or discomfort.

16 5-a. Decisions regarding hospice care. An attending physician or
17 attending nurse practitioner shall be authorized to make decisions
18 regarding hospice care and execute appropriate documents for such deci-
19 sions (including a hospice election form) for an adult patient under
20 this section who is hospice eligible in accordance with the following
21 requirements.

22 (a) The attending physician or attending nurse practitioner shall make
23 decisions under this section in consultation with staff directly respon-
24 sible for the patient's care, and shall base his or her decisions on the
25 standards for surrogate decisions set forth in subdivisions four and
26 five of section twenty-nine hundred ninety-four-d of this article;

27 (b) There is a concurring opinion as follows:

28 (i) in a general hospital, at least one other physician or nurse prac-
29 titioner designated by the hospital must independently determine that he
30 or she concurs that the recommendation is consistent with such standards
31 for surrogate decisions;

32 (ii) in a residential health care facility, the medical director of
33 the facility, or a physician or nurse practitioner designated by the
34 medical director, must independently determine that he or she concurs
35 that the recommendation is consistent with such standards for surrogate
36 decisions; provided that if the medical director is the patient's
37 attending physician or attending nurse practitioner, a different physi-
38 cian or nurse practitioner designated by the residential health care
39 facility must make this independent determination; or

40 (iii) in settings other than a general hospital or residential health
41 care facility, the medical director of the hospice, or a physician
42 designated by the medical director, must independently determine that he
43 or she concurs that the recommendation is medically appropriate and
44 consistent with such standards for surrogate decisions; provided that if
45 the medical director is the patient's attending physician, a different
46 physician designated by the hospice must make this independent determi-
47 nation; and

48 (c) The ethics review committee of the general hospital, residential
49 health care facility or hospice, as applicable, including at least one
50 physician or nurse practitioner who is not the patient's attending
51 physician or attending nurse practitioner, or a court of competent
52 jurisdiction, must review the decision and determine that it is consist-
53 ent with such standards for surrogate decisions.

54 6. Physician or nurse practitioner objection. If a physician or nurse
55 practitioner consulted for a concurring opinion objects to an attending
56 physician's or attending nurse practitioner's recommendation or determi-

1 nation made pursuant to this section, or a member of the hospital staff
2 directly responsible for the patient's care objects to an attending
3 physician's or attending nurse practitioner's recommendation about major
4 medical treatment or treatment without medical benefit, the matter shall
5 be referred to the ethics review committee if it cannot be otherwise
6 resolved.

7 § 23. Section 2994-j of the public health law, as added by chapter 8
8 of the laws of 2010, is amended read as follows:

9 § 2994-j. Revocation of consent. 1. A patient, surrogate, or parent or
10 guardian of a minor patient may at any time revoke his or her consent to
11 withhold or withdraw life-sustaining treatment by informing an attending
12 physician, attending nurse practitioner or a member of the medical or
13 nursing staff of the revocation.

14 2. An attending physician or attending nurse practitioner informed of
15 a revocation of consent made pursuant to this section shall immediately:

16 (a) record the revocation in the patient's medical record;

17 (b) cancel any orders implementing the decision to withhold or with-
18 draw treatment; and

19 (c) notify the hospital staff directly responsible for the patient's
20 care of the revocation and any cancellations.

21 3. Any member of the medical or nursing staff, other than a nurse
22 practitioner, informed of a revocation made pursuant to this section
23 shall immediately notify an attending physician or attending nurse prac-
24 titioner of the revocation.

25 § 24. The opening paragraph of subdivision 2 of section 2994-k of the
26 public health law, as added by chapter 8 of the laws of 2010, is amended
27 to read as follows:

28 If a decision to withhold or withdraw life-sustaining treatment has
29 been made pursuant to this article, and an attending physician or
30 attending nurse practitioner determines at any time that the decision is
31 no longer appropriate or authorized because the patient has regained
32 decision-making capacity or because the patient's condition has other-
33 wise improved, the physician or nurse practitioner shall immediately:

34 § 25. Section 2994-l of the public health law, as added by chapter 8
35 of the laws of 2010, is amended to read as follows:

36 § 2994-l. Interinstitutional transfers. If a patient with an order to
37 withhold or withdraw life-sustaining treatment is transferred from a
38 mental hygiene facility to a hospital or from a hospital to a different
39 hospital, any such order or plan shall remain effective until an attend-
40 ing physician or attending nurse practitioner first examines the trans-
41 ferred patient, whereupon an attending physician or attending nurse
42 practitioner must either:

43 1. Issue appropriate orders to continue the prior order or plan. Such
44 orders may be issued without obtaining another consent to withhold or
45 withdraw life-sustaining treatment pursuant to this article; or

46 2. Cancel such order, if the attending physician or attending nurse
47 practitioner determines that the order is no longer appropriate or
48 authorized. Before canceling the order the attending physician or
49 attending nurse practitioner shall make reasonable efforts to notify the
50 person who made the decision to withhold or withdraw treatment and the
51 hospital staff directly responsible for the patient's care of any such
52 cancellation. If such notice cannot reasonably be made prior to cancel-
53 ing the order or plan, the attending physician or attending nurse prac-
54 titioner shall make such notice as soon as reasonably practicable after
55 cancellation.

1 § 26. Subdivisions 3 and 4 of section 2994-m of the public health law,
2 as added by chapter 8 of the laws of 2010 and paragraph (c) of subdivi-
3 sion 4 as added by chapter 167 of the laws of 2011, are amended to read
4 as follows:

5 3. Committee membership. The membership of ethics review committees
6 must be interdisciplinary and must include at least five members who
7 have demonstrated an interest in or commitment to patient's rights or to
8 the medical, public health, or social needs of those who are ill. At
9 least three ethics review committee members must be health or social
10 services practitioners, at least one of whom must be a registered nurse
11 and one of whom must be a physician or nurse practitioner. At least one
12 member must be a person without any governance, employment or contractu-
13 al relationship with the hospital. In a residential health care facility
14 the facility must offer the residents' council of the facility (or of
15 another facility that participates in the committee) the opportunity to
16 appoint up to two persons to the ethics review committee, none of whom
17 may be a resident of or a family member of a resident of such facility,
18 and both of whom shall be persons who have expertise in or a demon-
19 strated commitment to patient rights or to the care and treatment of the
20 elderly or nursing home residents through professional or community
21 activities, other than activities performed as a health care provider.

22 4. Procedures for ethics review committee. (a) These procedures are
23 required only when: (i) the ethics review committee is convened to
24 review a decision by a surrogate to withhold or withdraw life-sustaining
25 treatment for: (A) a patient in a residential health care facility
26 pursuant to paragraph (b) of subdivision five of section twenty-nine
27 hundred ninety-four-d of this article; (B) a patient in a general hospi-
28 tal pursuant to paragraph (c) of subdivision five of section twenty-nine
29 hundred ninety-four-d of this article; or (C) an emancipated minor
30 patient pursuant to subdivision three of section twenty-nine hundred
31 ninety-four-e of this article; or (ii) when a person connected with the
32 case requests the ethics review committee to provide assistance in
33 resolving a dispute about proposed care. Nothing in this section shall
34 bar health care providers from first striving to resolve disputes
35 through less formal means, including the informal solicitation of
36 ethical advice from any source.

37 (b)(i) A person connected with the case may not participate as an
38 ethics review committee member in the consideration of that case.

39 (ii) The ethics review committee shall respond promptly, as required
40 by the circumstances, to any request for assistance in resolving a
41 dispute or consideration of a decision to withhold or withdraw life-sus-
42 taining treatment pursuant to paragraphs (b) and (c) of subdivision five
43 of section twenty-nine hundred ninety-four-d of this article made by a
44 person connected with the case. The committee shall permit persons
45 connected with the case to present their views to the committee, and to
46 have the option of being accompanied by an advisor when participating in
47 a committee meeting.

48 (iii) The ethics review committee shall promptly provide the patient,
49 where there is any indication of the patient's ability to comprehend the
50 information, the surrogate, other persons on the surrogate list directly
51 involved in the decision or dispute regarding the patient's care, any
52 parent or guardian of a minor patient directly involved in the decision
53 or dispute regarding the minor patient's care, an attending physician,
54 an attending nurse practitioner, the hospital, and other persons the
55 committee deems appropriate, with the following:

1 (A) notice of any pending case consideration concerning the patient,
2 including, for patients, persons on the surrogate list, parents and
3 guardians, information about the ethics review committee's procedures,
4 composition and function; and

5 (B) the committee's response to the case, including a written state-
6 ment of the reasons for approving or disapproving the withholding or
7 withdrawal of life-sustaining treatment for decisions considered pursu-
8 ant to subparagraph (ii) of paragraph (a) of subdivision five of section
9 twenty-nine hundred ninety-four-d of this article. The committee's
10 response to the case shall be included in the patient's medical record.

11 (iv) Following ethics review committee consideration of a case
12 concerning the withdrawal or withholding of life-sustaining treatment,
13 treatment shall not be withdrawn or withheld until the persons identi-
14 fied in subparagraph (iii) of this paragraph have been informed of the
15 committee's response to the case.

16 (c) When an ethics review committee is convened to review decisions
17 regarding hospice care for a patient in a general hospital or residen-
18 tial health care facility, the responsibilities of this section shall be
19 carried out by the ethics review committee of the general hospital or
20 residential health care facility, provided that such committee shall
21 invite a representative from hospice to participate.

22 § 27. Paragraph (b) of subdivision 4 of section 2994-r of the public
23 health law, as added by chapter 8 of the laws of 2010, is amended to
24 read as follows:

25 (b) The following persons may commence a special proceeding in a court
26 of competent jurisdiction to seek appointment as the health care guardi-
27 an of a minor patient solely for the purpose of deciding about life-sus-
28 taining treatment pursuant to this article:

29 (i) the hospital administrator;

30 (ii) an attending physician or attending nurse practitioner;

31 (iii) the local commissioner of social services or the local commis-
32 sioner of health, authorized to make medical treatment decisions for the
33 minor pursuant to section three hundred eighty-three-b of the social
34 services law; or

35 (iv) an individual, eighteen years of age or older, who has assumed
36 care of the minor for a substantial and continuous period of time.

37 § 28. Subdivision 1 of section 2994-s of the public health law, as
38 added by chapter 8 of the laws of 2010, is amended to read as follows:

39 1. Any hospital [~~or~~], attending physician or nurse practitioner that
40 refuses to honor a health care decision by a surrogate made pursuant to
41 this article and in accord with the standards set forth in this article
42 shall not be entitled to compensation for treatment, services, or proce-
43 dures refused by the surrogate, except that this subdivision shall not
44 apply:

45 (a) when a hospital [~~or~~], physician or nurse practitioner exercises
46 the rights granted by section twenty-nine hundred ninety-four-n of this
47 article, provided that the physician, nurse practitioner or hospital
48 promptly fulfills the obligations set forth in section twenty-nine
49 hundred ninety-four-n of this article;

50 (b) while a matter is under consideration by the ethics review commit-
51 tee, provided that the matter is promptly referred to and considered by
52 the committee;

53 (c) in the event of a dispute between individuals on the surrogate
54 list; or

55 (d) if the physician, nurse practitioner or hospital prevails in any
56 litigation concerning the surrogate's decision to refuse the treatment,

1 services or procedure. Nothing in this section shall determine or
2 affect how disputes among individuals on the surrogate list are
3 resolved.

4 § 29. Subdivision 2 of section 2994-aa of the public health law, as
5 added by chapter 8 of the laws of 2010, is amended and two new subdivi-
6 sions 2-a and 13-a are added to read as follows:

7 2. "Attending physician" means the physician who has primary responsi-
8 bility for the treatment and care of the patient. Where more than one
9 physician or nurse practitioner shares such responsibility, any such
10 physician or nurse practitioner may act as the attending physician or
11 attending nurse practitioner pursuant to this article.

12 2-a. "Attending nurse practitioner" means the nurse practitioner who
13 has primary responsibility for the treatment and care of the patient.
14 Where more than one physician and/or nurse practitioner shares such
15 responsibility, any such physician or nurse practitioner may act as the
16 attending physician or attending nurse practitioner pursuant to this
17 article.

18 13-a. "Nurse practitioner" means a nurse practitioner certified pursu-
19 ant to section sixty-nine hundred ten of the education law who is prac-
20 ticing in accordance with subdivision three of section sixty-nine
21 hundred two of the education law.

22 § 30. Section 2994-cc of the public health law, as added by chapter 8
23 of the laws of 2010, subdivision 4 as amended by section 131 of subpart
24 B of part C of chapter 62 of the laws of 2011, is amended to read as
25 follows:

26 § 2994-cc. Consent to a nonhospital order not to resuscitate. 1. An
27 adult with decision-making capacity, a health care agent, or a surrogate
28 may consent to a nonhospital order not to resuscitate orally to the
29 attending physician or attending nurse practitioner or in writing. If a
30 patient consents to a nonhospital order not to resuscitate while in a
31 correctional facility, notice of the patient's consent shall be given to
32 the facility director and reasonable efforts shall be made to notify an
33 individual designated by the patient to receive such notice prior to the
34 issuance of the nonhospital order not to resuscitate. Notification to
35 the facility director or the individual designated by the patient shall
36 not delay issuance of a nonhospital order not to resuscitate.

37 2. Consent by a health care agent shall be governed by article twenty-
38 ty-nine-C of this chapter.

39 3. Consent by a surrogate shall be governed by article twenty-nine-CC
40 of this chapter, except that: (a) a second determination of capacity
41 shall be made by a health or social services practitioner; and (b) the
42 authority of the ethics review committee set forth in article
43 twenty-nine-CC of this chapter shall apply only to nonhospital orders
44 issued in a hospital.

45 4. (a) When the concurrence of a second physician or nurse practition-
46 er is sought to fulfill the requirements for the issuance of a nonhospi-
47 tal order not to resuscitate for patients in a correctional facility,
48 such second physician or nurse practitioner shall be selected by the
49 chief medical officer of the department of corrections and community
50 supervision or his or her designee.

51 (b) When the concurrence of a second physician or nurse practition-
52 er is sought to fulfill the requirements for the issuance of a nonhospital
53 order not to resuscitate for hospice and home care patients, such second
54 physician or nurse practitioner shall be selected by the hospice medical
55 director or hospice nurse coordinator designated by the medical director

1 or by the home care services agency director of patient care services,
2 as appropriate to the patient.

3 5. Consent by a patient or a surrogate for a patient in a mental
4 hygiene facility shall be governed by article twenty-nine-B of this
5 chapter.

6 § 31. Section 2994-dd of the public health law, as added by chapter 8
7 of the laws of 2010, subdivision 6 as amended by section 10 of part J of
8 chapter 56 of the laws of 2012, is amended to read as follows:

9 § 2994-dd. Managing a nonhospital order not to resuscitate. 1. The
10 attending physician or attending nurse practitioner shall record the
11 issuance of a nonhospital order not to resuscitate in the patient's
12 medical record.

13 2. A nonhospital order not to resuscitate shall be issued upon a stan-
14 dard form prescribed by the commissioner. The commissioner shall also
15 develop a standard bracelet that may be worn by a patient with a nonhos-
16 pital order not to resuscitate to identify that status; provided, howev-
17 er, that no person may require a patient to wear such a bracelet and
18 that no person may require a patient to wear such a bracelet as a condi-
19 tion for honoring a nonhospital order not to resuscitate or for provid-
20 ing health care services.

21 3. An attending physician or attending nurse practitioner who has
22 issued a nonhospital order not to resuscitate, and who transfers care of
23 the patient to another physician or nurse practitioner, shall inform the
24 physician or nurse practitioner of the order.

25 4. For each patient for whom a nonhospital order not to resuscitate
26 has been issued, the attending physician or attending nurse practitioner
27 shall review whether the order is still appropriate in light of the
28 patient's condition each time he or she examines the patient, whether in
29 the hospital or elsewhere, but at least every ninety days, provided that
30 the review need not occur more than once every seven days. The attending
31 physician or attending nurse practitioner shall record the review in the
32 patient's medical record provided, however, that a registered nurse,
33 other than the attending nurse practitioner, who provides direct care to
34 the patient may record the review in the medical record at the direction
35 of the physician. In such case, the attending physician or attending
36 nurse practitioner shall include a confirmation of the review in the
37 patient's medical record within fourteen days of such review. Failure
38 to comply with this subdivision shall not render a nonhospital order not
39 to resuscitate ineffective.

40 5. A person who has consented to a nonhospital order not to resusci-
41 tate may at any time revoke his or her consent to the order by any act
42 evidencing a specific intent to revoke such consent. Any health care
43 professional, other than the attending physician or attending nurse
44 practitioner, informed of a revocation of consent to a nonhospital order
45 not to resuscitate shall notify the attending physician or attending
46 nurse practitioner of the revocation. An attending physician or attend-
47 ing nurse practitioner who is informed that a nonhospital order not to
48 resuscitate has been revoked shall record the revocation in the
49 patient's medical record, cancel the order and make diligent efforts to
50 retrieve the form issuing the order, and the standard bracelet, if any.

51 6. The commissioner may authorize the use of one or more alternative
52 forms for issuing a nonhospital order not to resuscitate (in place of
53 the standard form prescribed by the commissioner under subdivision two
54 of this section). Such alternative form or forms may also be used to
55 issue a non-hospital do not intubate order. Any such alternative forms
56 intended for use for persons with developmental disabilities or persons

1 with mental illness who are incapable of making their own health care
2 decisions or who have a guardian of the person appointed pursuant to
3 article eighty-one of the mental hygiene law or article seventeen-A of
4 the surrogate's court procedure act must also be approved by the commis-
5 sioner of developmental disabilities or the commissioner of mental
6 health, as appropriate. An alternative form under this subdivision shall
7 otherwise conform with applicable federal and state law. This subdivi-
8 sion does not limit, restrict or impair the use of an alternative form
9 for issuing an order not to resuscitate in a general hospital or resi-
10 dential health care facility under article twenty-eight of this chapter
11 or a hospital under subdivision ten of section 1.03 of the mental
12 hygiene law.

13 § 32. Subdivision 2 of section 2994-ee of the public health law, as
14 added by chapter 8 of the laws of 2010, is amended to read as follows:

15 2. Hospital emergency services physicians and hospital emergency
16 services nurse practitioners may direct that the order be disregarded if
17 other significant and exceptional medical circumstances warrant disre-
18 garding the order.

19 § 33. This act shall take effect on the one hundred eightieth day
20 after it shall have become a law; provided that, effective immediately,
21 any rules and regulations necessary to implement the provisions of this
22 act on its effective date are authorized and directed to be amended,
23 repealed and/or promulgated on or before such date.