

STATE OF NEW YORK

8536

IN ASSEMBLY

January 8, 2024

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the surrogate's court procedure act, in relation to orders not to resuscitate

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

1 Section 1. The opening paragraph of subdivision 3 of section 2994-b of
2 the public health law, as amended by chapter 479 of the laws of 2022, is
3 amended to read as follows:

4 Prior to seeking or relying upon a health care decision by a surrogate
5 for a patient under this article, if the attending practitioner has
6 reason to believe that the patient has a history of receiving services
7 for [~~a~~] an intellectual or developmental disability; it reasonably
8 appears to the attending practitioner that the patient has [~~a~~] an intel-
9 lectual or developmental disability; or the practitioner in a general
10 hospital has reason to believe that the patient has been temporarily
11 transferred from a mental hygiene facility operated or licensed by the
12 office of mental health or the office for people with developmental
13 disabilities, then such physician, nurse practitioner or physician
14 assistant shall make reasonable efforts to determine whether [~~para-~~
15 ~~graphs~~] paragraph (a), (b) or (c) of this subdivision [~~are~~] is applica-
16 ble:

17 § 2. Paragraph (c) of subdivision 4 of section 2994-c of the public
18 health law, as added by chapter 8 of the laws of 2010, is amended to
19 read as follows:

20 (c) if the patient is in a hospital as defined in subdivision ten of
21 section 1.03 of the mental hygiene law or was transferred from a mental
22 hygiene facility, to the director of the mental hygiene facility and to
23 the mental hygiene legal service under article forty-seven of the mental
24 hygiene law.

25 § 3. Section 2994-l of the public health law, as amended by chapter
26 708 of the laws of 2019, is amended to read as follows:

27 § 2994-l. Interinstitutional transfers. 1. If a patient with an order
28 to withhold or withdraw life-sustaining treatment is transferred from a

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

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1 mental hygiene facility to a hospital or from a hospital to a different
2 hospital, any such order or plan shall remain effective until an attend-
3 ing practitioner first examines the transferred patient, whereupon an
4 attending practitioner must either:

5 ~~[1-]~~ (a) Issue appropriate orders to continue the prior order or plan.
6 Such orders may be issued without obtaining another consent to withhold
7 or withdraw life-sustaining treatment pursuant to this article; or

8 ~~[2-]~~ (b) Cancel such order, if the attending practitioner determines
9 that the order is no longer appropriate or authorized. Before canceling
10 the order the attending practitioner shall make reasonable efforts to
11 notify the person who made the decision to withhold or withdraw treat-
12 ment and the hospital staff directly responsible for the patient's care
13 of any such cancellation. If such notice cannot reasonably be made prior
14 to canceling the order or plan, the attending practitioner shall make
15 such notice as soon as reasonably practicable after cancellation.

16 2. Orders to withhold or withdraw life-sustaining treatment shall
17 remain effective and no affirmative action by a general hospital shall
18 be required pursuant to this section where a patient is transferred
19 within a general hospital between a medical unit and a ward, wing, unit,
20 or other part of the general hospital which is operated for the purpose
21 of providing services for persons with mental illness pursuant to an
22 operating certificate issued by the commissioner of mental health.

23 § 4. Subdivision 5 of section 2994-cc of the public health law, as
24 amended by a chapter of the laws of 2023 amending the public health law
25 relating to orders not to resuscitate, as proposed in legislative bills
26 numbers S. 2930 and A. 4332, is amended to read as follows:

27 5. Consent by a patient or a surrogate for a patient in a residential
28 facility operated or licensed by the office of mental health, other than
29 a hospital as defined in section 1.03 of the mental hygiene law, shall
30 be governed by this article. Consent by a patient who is intellectually
31 or otherwise developmentally disabled and is eligible for life-sustain-
32 ing treatment decision pursuant to section seventeen hundred fifty-b of
33 the surrogate's court procedure act shall be governed by that section.

34 § 5. Subparagraph (i) of paragraph (b) of subdivision 4 of section
35 1750-b of the surrogate's court procedure act, as amended by chapter 198
36 of the laws of 2016, is amended to read as follows:

37 (i) the person who is intellectually disabled has a medical condition
38 as follows:

39 A. a terminal condition, ~~[as defined in subdivision twenty-three of~~
40 ~~section twenty-nine hundred sixty-one of the public health law]~~ which
41 for the purpose of this section means an illness or injury from which
42 there is no recovery, and which reasonably can be expected to cause
43 death within one year; or

44 B. permanent unconsciousness; or

45 C. a medical condition other than such person's intellectual disabili-
46 ty which requires life-sustaining treatment, is irreversible and which
47 will continue indefinitely; and

48 § 6. Paragraph (d) of subdivision 5 of section 1750-b of the surro-
49 gate's court procedure act, as amended by chapter 198 of the laws of
50 2016, is amended to read as follows:

51 (d) Dispute mediation. In the event of an objection pursuant to this
52 subdivision, at the request of the objecting party or person or entity
53 authorized to act as a guardian under this section, except a surrogate
54 decision making committee established pursuant to article eighty of the
55 mental hygiene law, such objection shall be referred to ~~[a dispute medi-~~
56 ~~ation system]~~ an ethics review committee, established pursuant to

1 section two thousand nine hundred [~~seventy-two~~] ninety-four-m of the
2 public health law or similar entity for mediating disputes in a hospice,
3 such as a patient's advocate's office, hospital chaplain's office or
4 ethics committee, as described in writing and adopted by the governing
5 authority of such hospice, for non-binding mediation. In the event that
6 such dispute cannot be resolved within seventy-two hours or no such
7 mediation entity exists or is reasonably available for mediation of a
8 dispute, the objection shall proceed to judicial review pursuant to this
9 subdivision. The party requesting mediation shall provide notification
10 to those parties entitled to notice pursuant to paragraph (a) of this
11 subdivision.

12 § 7. This act shall take effect on the same date and in the same
13 manner as a chapter of the laws of 2023 amending the public health law
14 relating to orders not to resuscitate, as proposed in legislative bills
15 numbers S. 2930 and A. 4332, takes effect.