S T A T E O F N E W Y O R K

7729

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. GOTTFRIED, SCHIMMINGER, BACALLES, BARRON, BOYLAND, BRENNAN, CAHILL, CASTRO, DelMONTE, DINOWITZ, FINCH, GABRYSZAK, GALEF, GUNTHER, JAFFEE, KELLNER, KOON, LANCMAN, V. LOPEZ, MAGNARELLI, PEOPLES, SPANO, STIRPE, TOWNS -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, AUBRY, BENEDETTO, BING, BRADLEY, CHRISTENSEN, CLARK, COOK, CYMBROWITZ, DESTITO, EDDINGTON, ENGLEBRIGHT, FIELDS, GANTT, GIANARIS, GLICK, GREENE, HIKIND, HOOPER, HOYT, JACOBS, JOHN, LATIMER, LAVINE, LIFTON, LUPARDO, MAGEE, MAISEL, MAYERSOHN, McENENY, MENG, MILLMAN, MORELLE, NOLAN, ORTIZ, PAULIN, PHEFFER, PRETLOW, REILLY, N. RIVERA, P. RIVERA, ROBINSON, ROSENTHAL, SCARBOROUGH, SEMINERIO, SWEENEY, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing procedures for making medical treatment decisions on behalf of persons who lack the capacity to decide about treatment for themselves and to repeal certain provisions of such law relating thereto

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

Section 1. Legislative intent. Under article 29-C of the public health law, competent adults have a powerful way to control their medical treatment even after they lose decision-making capacity, by appointing someone they trust to decide on their behalf. This legislation fills a gap that remains in New York law. It adds, inter alia, a new article 29-CC to the public health law, which establishes a decision-making process whereby a surrogate is selected and empowered to make health care decisions for patients who lack capacity to make their own health care decisions and who have not otherwise appointed an agent to make health care decisions pursuant to article 29-C of the public health law or provided clear and convincing evidence of their treatment wishes.

The legislature does not intend to encourage or discourage any particular health care decision or treatment, or to create or expand a

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

LBD05935-01-9

substantive right of competent adults to decide about treatment for themselves. Further, the legislature does not intend to authorize a surrogate to deny to the patient personal services that every patient would generally receive, such as appropriate food, water, bed rest, room temperature and hygiene. This legislation establishes a procedure to facilitate responsible decision-making by surrogates on behalf of patients who do not have capacity to make their own health care decisions.

This legislation affirms existing laws and policies that limit individual conduct of patients with or without capacity, including those laws and policies against homicide, suicide, assisted suicide and mercy killing.

S 2. The public health law is amended by adding two new articles 29-CC and 29-CCC to read as follows:

ARTICLE 29-CC

FAMILY HEALTH CARE DECISIONS ACT

SECTION 2994-A. DEFINITIONS.
2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE SEVENTEEN-A GUARDIAN.
2994-C. DETERMINATION OF INCAPACITY.
2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES.
2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR PATIENTS.
2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN.
2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES.
2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE FACILITY.
2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE.
2994-J. REVOCATION OF CONSENT.
2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS.
2994-L. INTERINSTITUTIONAL TRANSFERS.
2994-M. ETHICS REVIEW COMMITTEES.
2994-N. CONSCIENCE OBJECTIONS.
2994-O. IMMUNITY.
2994-P. LIABILITY FOR HEALTH CARE COSTS.
2994-Q. EFFECT ON OTHER RIGHTS.
2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE GUARDIAN FOR MINOR PATIENT.
2994-S. REMEDY.
2994-T. REGULATIONS.
2994-U. RIGHTS TO BE PUBLICIZED.

S 2994-A. DEFINITIONS. THE FOLLOWING WORDS OR PHRASES, USED IN THIS ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ADULT" MEANS ANY PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER OR HAS MARRIED.

2. "ATTENDING PHYSICIAN" MEANS A PHYSICIAN, SELECTED BY OR ASSIGNED TO A PATIENT PURSUANT TO HOSPITAL POLICY, WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND CARE OF THE PATIENT. WHERE MORE THAN ONE PHYSICIAN SHARES SUCH RESPONSIBILITY, OR WHERE A PHYSICIAN IS ACTING ON THE ATTENDING PHYSICIAN'S BEHALF, ANY SUCH PHYSICIAN MAY ACT AS AN ATTENDING PHYSICIAN PURSUANT TO THIS ARTICLE.

3. "ETHICS REVIEW COMMITTEE" MEANS THE INTERDISCIPLINARY HOSPITAL COMMITTEE ESTABLISHED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-M OF THIS ARTICLE.

4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY ARREST. CARDIOPULMONARY RESUSCITATION SHALL NOT INCLUDE MEASURES TO IMPROVE VENTILATION AND CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

5. "CLOSE RELATIVE OR CLOSE FRIEND" MEANS ANY PERSON, EIGHTEEN YEARS OF AGE OR OLDER, WHO IS A RELATIVE OR FRIEND OF THE PATIENT, REGARDLESS OF BLOOD OR LEGAL RELATIONSHIP, AND WHO HAS MAINTAINED SUCH REGULAR CONTACT WITH THE PATIENT AS TO BE FAMILIAR WITH THE PATIENT'S ACTIVITIES, HEALTH, AND RELIGIOUS OR MORAL BELIEFS.

6. "DECISION-MAKING CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, INCLUDING THE BENEFITS AND RISKS OF, AND ALTERNATIVES TO, ANY SUCH PROPOSED HEALTH CARE, AND TO REACH AN INFORMED DECISION.

7. "DEVELOPMENTAL DISABILITY" MEANS A DEVELOPMENTAL DISABILITY AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW.

8. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER PERSON:

(A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATIONSHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN JURISDICTION; OR

(B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

(C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO: COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON; SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP OF THE PERSONS.

EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMESTIC PARTNER" ALSO SHALL NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

9. "EMANCIPATED MINOR PATIENT" MEANS A MINOR PATIENT WHO IS THE PARENT OF A CHILD, OR WHO IS SIXTEEN YEARS OF AGE OR OLDER AND LIVING INDEPENDENTLY FROM HIS OR HER PARENTS OR GUARDIAN.

10. "GENERAL HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

11. "GUARDIAN OF A MINOR" OR "GUARDIAN" MEANS A HEALTH CARE GUARDIAN OR A LEGAL GUARDIAN OF THE PERSON OF A MINOR.

12. "HEALTH CARE" MEANS ANY TREATMENT, SERVICE, OR PROCEDURE TO DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION. PROVIDING NUTRITION OR HYDRATION ORALLY, WITHOUT RELIANCE ON MEDICAL TREATMENT, IS NOT HEALTH CARE UNDER THIS ARTICLE AND IS NOT SUBJECT TO THIS ARTICLE.

13. "HEALTH CARE AGENT" MEANS A HEALTH CARE AGENT DESIGNATED BY AN ADULT PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER.

14. "HEALTH CARE DECISION" MEANS ANY DECISION TO CONSENT OR REFUSE TO CONSENT TO HEALTH CARE.

15. "HEALTH CARE GUARDIAN" MEANS AN INDIVIDUAL APPOINTED BY A COURT, PURSUANT TO SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS ARTICLE, AS THE GUARDIAN OF A MINOR PATIENT SOLELY FOR THE PURPOSE OF DECIDING ABOUT LIFE-SUSTAINING TREATMENT PURSUANT TO THIS ARTICLE.

16. "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL OR FACILITY LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PROFESSIONAL PRACTICE.

17. "HEALTH OR SOCIAL SERVICE PRACTITIONER" MEANS A REGISTERED PROFESSIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT, PSYCHOLOGIST OR CERTIFIED SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT TO THE EDUCATION LAW.

18. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, AND A RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, BUT EXCLUDING A WARD, WING, UNIT OR OTHER PART OF A GENERAL HOSPITAL THAT PROVIDES MENTAL HEALTH SERVICES TO MENTALLY ILL PERSONS PURSUANT TO AN OPERATING CERTIFICATE ISSUED BY THE COMMISSIONER OF MENTAL HEALTH OTHER THAN MEDICAL-PSYCHIATRIC UNITS JOINTLY IDENTIFIED BY THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF MENTAL HEALTH.

19. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCEDURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME, AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF MEDICAL CERTAINTY.

20. "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.

21. "MENTAL ILLNESS" MEANS A MENTAL ILLNESS AS DEFINED IN SUBDIVISION TWENTY OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, PROVIDED, HOWEVER, THAT MENTAL ILLNESS SHALL NOT INCLUDE DEMENTIA, SUCH AS ALZHEIMER'S DISEASE, OR OTHER DISORDERS RELATED TO DEMENTIA.

22. "MINOR" MEANS ANY PERSON WHO IS NOT AN ADULT.

23. "ORDER NOT TO RESUSCITATE" MEANS AN ORDER NOT TO ATTEMPT CARDIOPULMONARY RESUSCITATION IN THE EVENT A PATIENT SUFFERS CARDIAC OR RESPIRATORY ARREST.

24. "PARENT", FOR THE PURPOSE OF A HEALTH CARE DECISION ABOUT A MINOR PATIENT, MEANS A PARENT WHO HAS CUSTODY OF, OR WHO HAS MAINTAINED SUBSTANTIAL AND CONTINUOUS CONTACT WITH, THE MINOR PATIENT.

25. "PATIENT" MEANS A PERSON ADMITTED TO A HOSPITAL.

26. "PERSON CONNECTED WITH THE CASE" MEANS THE PATIENT, ANY PERSON ON THE SURROGATE LIST, A PARENT OR GUARDIAN OF A MINOR PATIENT, THE HOSPITAL ADMINISTRATOR, AN ATTENDING PHYSICIAN, ANY OTHER HEALTH OR SOCIAL SERVICES PRACTITIONER WHO IS OR HAS BEEN DIRECTLY INVOLVED IN THE PATIENT'S CARE, AND ANY DULY AUTHORIZED STATE AGENCY, INCLUDING THE FACILITY DIRECTOR OR REGIONAL DIRECTOR FOR A PATIENT TRANSFERRED FROM A MENTAL HYGIENE FACILITY AND THE FACILITY DIRECTOR FOR A PATIENT TRANSFERRED FROM A CORRECTIONAL FACILITY.

27. "REASONABLY AVAILABLE" MEANS THAT A PERSON TO BE CONTACTED CAN BE CONTACTED WITH DILIGENT EFFORTS BY AN ATTENDING PHYSICIAN, ANOTHER PERSON ACTING ON BEHALF OF AN ATTENDING PHYSICIAN, OR THE HOSPITAL.

28. "RESIDENTIAL HEALTH CARE FACILITY" MEANS A RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

29. "SURROGATE" MEANS THE PERSON SELECTED TO MAKE A HEALTH CARE DECISION ON BEHALF OF A PATIENT PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

30. "SURROGATE LIST" MEANS THE LIST SET FORTH IN SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

S 2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE SEVENTEEN-A GUARDIAN. A HEALTH CARE DECISION BY A HEALTH CARE AGENT ON A PATIENT'S BEHALF IS GOVERNED BY ARTICLE TWENTY-NINE-C OF THIS CHAPTER AND SHALL HAVE PRIORITY OVER DECISIONS BY ANY OTHER PERSON EXCEPT THE PATIENT OR AS OTHERWISE PROVIDED IN THE HEALTH CARE PROXY. HEALTH CARE PROVIDERS SHALL MAKE REASONABLE EFFORTS TO DETERMINE WHETHER THE PATIENT HAS APPOINTED A HEALTH CARE AGENT AND TO CONTACT THE AGENT BEFORE RELYING ON A DECISION BY A SURROGATE UNDER THIS ARTICLE.

S 2994-C. DETERMINATION OF INCAPACITY. 1. PRESUMPTION OF CAPACITY. FOR PURPOSES OF THIS ARTICLE, EVERY ADULT SHALL BE PRESUMED TO HAVE DECISION-MAKING CAPACITY UNLESS DETERMINED OTHERWISE PURSUANT TO THIS SECTION OR PURSUANT TO COURT ORDER, OR UNLESS A GUARDIAN IS AUTHORIZED TO DECIDE ABOUT HEALTH CARE FOR THE ADULT PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW.

2. DETERMINATION BY ATTENDING PHYSICIAN. A DETERMINATION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY, AS WELL AS AN ASSESSMENT OF THE CAUSE AND EXTENT OF THE PATIENT'S INCAPACITY AND THE LIKELIHOOD THAT THE PATIENT WILL REGAIN DECISION-MAKING CAPACITY, SHALL BE MADE BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF CERTAINTY.

3. INDEPENDENT DETERMINATIONS. (A) (I) IN A RESIDENTIAL HEALTH CARE FACILITY, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY. IN A GENERAL HOSPITAL, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY IF THE SURROGATE'S DECISION CONCERNS THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT.

(II) IF AN ATTENDING PHYSICIAN HAS DETERMINED THAT THE PATIENT LACKS DECISION-MAKING CAPACITY AND THE HEALTH OR SOCIAL SERVICES PRACTITIONER CONSULTED FOR AN INDEPENDENT DETERMINATION DISAGREES WITH THE ATTENDING PHYSICIAN'S DETERMINATION, THE MATTER SHALL BE REFERRED TO THE ETHICS REVIEW COMMITTEE IF IT CANNOT OTHERWISE BE RESOLVED.

(B) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT LACKS DECISION-MAKING CAPACITY BECAUSE OF MENTAL RETARDATION OR DEVELOPMENTAL DISABILITY, THE ATTENDING PHYSICIAN WHO MAKES THE DETERMINATION MUST HAVE, OR MUST CONSULT WITH A HEALTH OR SOCIAL SERVICES PRACTITIONER WHO HAS SPECIALIZED TRAINING OR EXPERIENCE IN DIAGNOSING OR TREATING MENTAL ILLNESS OR DEVELOPMENTAL DISABILITIES OF THE SAME OR SIMILAR NATURE.

(C) HOSPITALS SHALL ADOPT WRITTEN POLICIES IDENTIFYING THE TRAINING AND CREDENTIALS OF HEALTH OR SOCIAL SERVICES PRACTITIONERS QUALIFIED TO PROVIDE INDEPENDENT DETERMINATIONS OF INCAPACITY.

4. INFORMING THE PATIENT AND SURROGATE. NOTICE OF A DETERMINATION THAT A SURROGATE WILL MAKE HEALTH CARE DECISIONS BECAUSE THE ADULT PATIENT HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY SHALL PROMPTLY BE GIVEN:

(A) TO THE PATIENT, WHERE THERE IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE INFORMATION; AND

(B) TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAIL-

ABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

5. LIMITED PURPOSE OF DETERMINATION. A DETERMINATION MADE PURSUANT TO THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY SHALL NOT BE CONSTRUED AS A FINDING THAT THE PATIENT LACKS CAPACITY FOR ANY OTHER PURPOSE.

6. PRIORITY OF PATIENT'S DECISION. NOTWITHSTANDING A DETERMINATION PURSUANT TO THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY, IF THE PATIENT OBJECTS TO THE DETERMINATION OF INCAPACITY, OR TO THE CHOICE OF A SURROGATE OR TO A HEALTH CARE DECISION MADE BY A SURROGATE OR MADE PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G OF THIS ARTICLE, THE PATIENT'S OBJECTION OR DECISION SHALL PREVAIL UNLESS A COURT OF COMPETENT JURISDICTION HAS DETERMINED THAT THE PATIENT LACKS DECISION-MAKING CAPACITY OR THE PATIENT IS OR HAS BEEN ADJUDGED INCOMPETENT FOR ALL PURPOSES.

7. CONFIRMATION OF CONTINUED LACK OF DECISION-MAKING CAPACITY. AN ATTENDING PHYSICIAN SHALL CONFIRM THE ADULT PATIENT'S CONTINUED LACK OF DECISION-MAKING CAPACITY BEFORE COMPLYING WITH HEALTH CARE DECISIONS MADE PURSUANT TO THIS ARTICLE, OTHER THAN THOSE DECISIONS MADE AT OR ABOUT THE TIME OF THE INITIAL DETERMINATION. AN INDEPENDENT DETERMINATION OF THE PATIENT'S CONTINUED LACK OF DECISION-MAKING CAPACITY SHALL BE REQUIRED IF THE SUBSEQUENT HEALTH CARE DECISION CONCERNS THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. HEALTH CARE PROVIDERS SHALL NOT BE REQUIRED TO INFORM THE PATIENT OR SURROGATE OF THE CONFIRMATION.

S 2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES. 1. IDENTIFYING THE SURROGATE. ONE PERSON FROM THE FOLLOWING LIST, CHOSEN FROM THE CLASS HIGHEST IN PRIORITY WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, SHALL BE THE SURROGATE FOR AN ADULT PATIENT WITHOUT DECISION-MAKING CAPACITY:

(A) A GUARDIAN AUTHORIZED TO DECIDE ABOUT HEALTH CARE PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW;

(B) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, DESIGNATED ORALLY BY THE PATIENT TO SERVE AS SURROGATE, IF SUCH DESIGNATION WAS MADE IN THE PRESENCE OF TWO ADULT WITNESSES, EITHER OF WHOM MAY BE AN EMPLOYEE OF OR AFFILIATED WITH A FACILITY AT WHICH THE PATIENT IS RECEIVING TREATMENT, BUT NEITHER OF WHOM IS DESIGNATED AS THE SURROGATE UNDER THIS PARAGRAPH, AND THOSE WITNESSES AFFIRM THAT THE PATIENT REASONABLY APPEARED TO HAVE DECISION-MAKING CAPACITY TO MAKE SUCH A DESIGNATION;

(C) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, WHO IS A MEMBER OF ANY ONE OF THE CLASSES SET FORTH IN THIS SUBDIVISION AND WHO IS DESIGNATED BY THE PERSON WHO OTHERWISE WOULD BE CHOSEN TO ACT AS SURROGATE BASED ON THE PRIORITY LIST ESTABLISHED IN THIS SUBDIVISION, PROVIDED THAT NO PERSON IN A CLASS HIGHER IN PRIORITY THAN THE PERSON DESIGNATED OBJECTS;

(D) THE SPOUSE, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE DOMESTIC PARTNER;

(E) A SON OR DAUGHTER EIGHTEEN YEARS OF AGE OR OLDER;

(F) A PARENT;

(G) A BROTHER OR SISTER EIGHTEEN YEARS OF AGE OR OLDER;

(H) A CLOSE RELATIVE OR CLOSE FRIEND.

2. RESTRICTIONS ON WHO MAY BE A SURROGATE. AN OPERATOR, ADMINISTRATOR, OR EMPLOYEE OF A HOSPITAL, A PHYSICIAN WHO HAS PRIVILEGES AT THE HOSPITAL OR A HEALTH CARE PROVIDER UNDER CONTRACT WITH THE HOSPITAL MAY NOT SERVE AS THE SURROGATE FOR ANY ADULT WHO IS A PATIENT OF SUCH HOSPITAL, UNLESS SUCH INDIVIDUAL IS RELATED TO THE PATIENT BY BLOOD, MARRIAGE, OR

ADOPTION, OR IS A CLOSE FRIEND OF THE PATIENT WHOSE FRIENDSHIP WITH THE PATIENT PRECEDED THE PATIENT'S ADMISSION TO THE FACILITY. IF A PHYSICIAN SERVES AS SURROGATE, THE PHYSICIAN SHALL NOT ACT AS THE PATIENT'S ATTENDING PHYSICIAN AFTER HIS OR HER AUTHORITY AS SURROGATE BEGINS.

3. AUTHORITY AND DUTIES OF SURROGATE. (A) SCOPE OF SURROGATE'S AUTHORITY.

(I) SUBJECT TO THE STANDARDS AND LIMITATIONS OF THIS ARTICLE, THE SURROGATE SHALL HAVE THE AUTHORITY TO MAKE ANY AND ALL HEALTH CARE DECISIONS ON THE ADULT PATIENT'S BEHALF THAT THE PATIENT COULD MAKE.

(II) NOTHING IN THIS ARTICLE SHALL OBLIGATE HEALTH CARE PROVIDERS TO SEEK THE CONSENT OF A SURROGATE IF AN ADULT PATIENT HAS ALREADY MADE A DECISION ABOUT THE PROPOSED HEALTH CARE, EXPRESSED ORALLY OR IN WRITING, INCLUDING A DECISION ABOUT WITHDRAWING OR WITHHOLDING LIFE-SUSTAINING TREATMENT. IF AN ATTENDING PHYSICIAN RELIES ON THE PATIENT'S PRIOR DECISION, THE PHYSICIAN SHALL RECORD THE PRIOR DECISION IN THE PATIENT'S MEDICAL RECORD. IF A SURROGATE HAS ALREADY BEEN DESIGNATED FOR THE PATIENT, THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE SURROGATE PRIOR TO IMPLEMENTING THE DECISION.

(B) COMMENCEMENT OF SURROGATE'S AUTHORITY. THE SURROGATE'S AUTHORITY SHALL COMMENCE UPON A DETERMINATION, MADE PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE, THAT THE ADULT PATIENT LACKS DECISION-MAKING CAPACITY. IN THE EVENT AN ATTENDING PHYSICIAN DETERMINES THAT THE PATIENT HAS REGAINED DECISION-MAKING CAPACITY, THE AUTHORITY OF THE SURROGATE SHALL CEASE.

(C) RIGHT AND DUTY TO BE INFORMED. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE SURROGATE SHALL HAVE THE RIGHT TO RECEIVE MEDICAL INFORMATION AND MEDICAL RECORDS NECESSARY TO MAKE INFORMED DECISIONS ABOUT THE PATIENT'S HEALTH CARE. HEALTH CARE PROVIDERS SHALL PROVIDE AND THE SURROGATE SHALL SEEK INFORMATION NECESSARY TO MAKE AN INFORMED DECISION, INCLUDING INFORMATION ABOUT THE PATIENT'S DIAGNOSIS, PROGNOSIS, THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, AND THE BENEFITS AND RISKS OF AND ALTERNATIVE TO PROPOSED HEALTH CARE.

4. DECISION-MAKING STANDARDS. (A) THE SURROGATE SHALL MAKE HEALTH CARE DECISIONS:

(I) IN ACCORDANCE WITH THE PATIENT'S WISHES, INCLUDING THE PATIENT'S RELIGIOUS AND MORAL BELIEFS; OR

(II) IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN AND CANNOT WITH REASONABLE DILIGENCE BE ASCERTAINED, IN ACCORDANCE WITH THE PATIENT'S BEST INTERESTS. AN ASSESSMENT OF THE PATIENT'S BEST INTERESTS SHALL INCLUDE: CONSIDERATION OF THE DIGNITY AND UNIQUENESS OF EVERY PERSON; THE POSSIBILITY AND EXTENT OF PRESERVING THE PATIENT'S LIFE; THE PRESERVATION, IMPROVEMENT OR RESTORATION OF THE PATIENT'S HEALTH OR FUNCTIONING; THE RELIEF OF THE PATIENT'S SUFFERING; AND ANY MEDICAL CONDITION AND SUCH OTHER CONCERNS AND VALUES AS A REASONABLE PERSON IN THE PATIENT'S CIRCUMSTANCES WOULD WISH TO CONSIDER.

(B) IN ALL CASES, THE SURROGATE'S ASSESSMENT OF THE PATIENT'S WISHES AND BEST INTERESTS SHALL BE PATIENT-CENTERED; HEALTH CARE DECISIONS SHALL BE MADE ON AN INDIVIDUALIZED BASIS FOR EACH PATIENT, AND SHALL BE CONSISTENT WITH THE VALUES OF THE PATIENT, INCLUDING THE PATIENT'S RELIGIOUS AND MORAL BELIEFS, TO THE EXTENT REASONABLY POSSIBLE.

5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. IN ADDITION TO THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION, DECISIONS BY SURROGATES TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT SHALL BE AUTHORIZED ONLY IF THE FOLLOWING CONDITIONS ARE SATISFIED, AS APPLICABLE:

(A)(I) TREATMENT WOULD BE AN EXTRAORDINARY BURDEN TO THE PATIENT AND AN ATTENDING PHYSICIAN DETERMINES, WITH THE INDEPENDENT CONCURRENCE OF ANOTHER PHYSICIAN, THAT, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND IN ACCORD WITH ACCEPTED MEDICAL STANDARDS, (A) THE PATIENT HAS AN ILLNESS OR INJURY WHICH CAN BE EXPECTED TO CAUSE DEATH WITHIN SIX MONTHS, WHETHER OR NOT TREATMENT IS PROVIDED; OR (B) THE PATIENT IS PERMANENTLY UNCONSCIOUS; OR

(II) THE PROVISION OF TREATMENT WOULD INVOLVE SUCH PAIN, SUFFERING OR OTHER BURDEN THAT IT WOULD REASONABLY BE DEEMED INHUMANE OR EXTRAORDINARILY BURDENSOME UNDER THE CIRCUMSTANCES AND THE PATIENT HAS AN IRREVERSIBLE OR INCURABLE CONDITION, AS DETERMINED BY AN ATTENDING PHYSICIAN WITH THE INDEPENDENT CONCURRENCE OF ANOTHER PHYSICIAN TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND IN ACCORD WITH ACCEPTED MEDICAL STANDARDS.

(B) IN A RESIDENTIAL HEALTH CARE FACILITY, A SURROGATE SHALL HAVE THE AUTHORITY TO REFUSE LIFE-SUSTAINING TREATMENT UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION ONLY IF THE ETHICS REVIEW COMMITTEE, INCLUDING AT LEAST ONE PHYSICIAN WHO IS NOT DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE, OR A COURT OF COMPETENT JURISDICTION, REVIEWS THE DECISION AND DETERMINES THAT IT MEETS THE STANDARDS SET FORTH IN THIS ARTICLE. THIS REQUIREMENT SHALL NOT APPLY TO A DECISION TO WITHHOLD CARDIOPULMONARY RESUSCITATION.

(C) IN A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, IF THE ATTENDING PHYSICIAN OBJECTS TO A SURROGATE'S DECISION, UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION, TO WITHDRAW OR WITHHOLD NUTRITION AND HYDRATION PROVIDED BY MEANS OF MEDICAL TREATMENT THE DECISION SHALL NOT BE IMPLEMENTED UNTIL THE ETHICS REVIEW COMMITTEE, INCLUDING AT LEAST ONE PHYSICIAN WHO IS NOT DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE, OR A COURT OF COMPETENT JURISDICTION, REVIEWS THE DECISION AND DETERMINES THAT IT MEETS THE STANDARDS SET FORTH IN THIS SUBDIVISION AND SUBDIVISION FOUR OF THIS SECTION.

(D) PROVIDING NUTRITION AND HYDRATION ORALLY, WITHOUT RELIANCE ON MEDICAL TREATMENT, IS NOT HEALTH CARE UNDER THIS ARTICLE AND IS NOT SUBJECT TO THIS ARTICLE.

(E) EXPRESSION OF DECISIONS. THE SURROGATE SHALL EXPRESS A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT EITHER ORALLY OR IN WRITING.

6. DECISIONS RELATING TO PATIENTS WITH MENTAL RETARDATION. (A) THIS SUBDIVISION APPLIES TO DECISIONS RELATING TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FOR PATIENTS WHO LACK CAPACITY BECAUSE OF MENTAL RETARDATION, AS DEFINED IN SECTION 1.03 OF THE MENTAL HYGIENE LAW, OR AN IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR THAT MEETS THAT DEFINITION.

(B) SUCH DECISION SHALL BE MADE UNDER THIS ARTICLE BY A SURROGATE, OR IN THE CASE OF A MINOR, BY A PARENT OR GUARDIAN, PROVIDED THAT:

(I) SUCH DECISION IS NOT BASED ON A PRESUMPTION THAT PERSONS WITH MENTAL RETARDATION OR SIMILAR IMPAIRMENTS ARE NOT ENTITLED TO EQUAL RIGHTS, EQUAL PROTECTION, RESPECT, FULL AND EFFICACIOUS HEALTH CARE AND DIGNITY AFFORDED TO PERSONS WITHOUT MENTAL RETARDATION OR OTHER SIMILAR IMPAIRMENTS;

(II) SUCH DECISION IS IMPLEMENTED AFTER ALL OTHER TREATMENT OPTIONS WHICH WOULD HAVE BEEN CONSIDERED FOR A PATIENT WITHOUT MENTAL RETARDATION OR A SIMILAR IMPAIRMENT HAVE BEEN CONSIDERED;

(III) THE DETERMINATION AND CONFIRMATION OF THE PATIENT'S INCAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE

AND A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT, IF ANY, ARE DOCUMENTED AND ENTERED ON THE PATIENT'S HEALTH CARE RECORD; AND

(IV) AT LEAST FORTY-EIGHT HOURS OR AS SOON AS PRACTICABLE PRIOR TO IMPLEMENTATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT, THE ATTENDING PHYSICIAN SHALL NOTIFY THE PATIENT, WHERE THERE IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE INFORMATION, AND, IF THE PATIENT RESIDES IN A RESIDENTIAL SETTING CERTIFIED OR LICENSED BY THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, SUCH COMMISSIONER OR HIS OR HER DESIGNEE. THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, AT HIS OR HER DISCRETION, MAY NOTIFY THE MENTAL HYGIENE LEGAL SERVICES. IN ADDITION, THE HOSPITAL SHALL COMPLY WITH THE NOTICE REQUIREMENTS UNDER THIS SECTION.

(C) (I) IN THE EVENT OF AN OBJECTION UNDER THIS ARTICLE, BY A PERSON CONNECTED WITH THE CASE, TO A DECISION UNDER THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT SUCH DECISION SHALL BE SUSPENDED PENDING REVIEW BY THE ETHICS REVIEW COMMITTEE.

(II) A PHYSICIAN WHO RECEIVES AN ORDER TO IMPLEMENT A DECISION UNDER THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING CARE AND OBJECTS TO SUCH ORDER, SHALL PROMPTLY REFER SUCH MATTER TO THE ETHICS REVIEW COMMITTEE, PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE.

(III) FOR ADULTS UNDER THIS SUBDIVISION WITHOUT A SURROGATE WILLING OR ABLE TO ACT UNDER THIS ARTICLE, A SURROGATE DECISION MAKING COMMITTEE, UNDER ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW, SHALL BE AUTHORIZED TO MAKE A DECISION UNDER THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT.

(IV) A SURROGATE ACTING UNDER THIS SUBDIVISION, OR IN THE CASE OF A MINOR, A PARENT OR GUARDIAN, SHALL HAVE THE AFFIRMATIVE OBLIGATION TO ADVOCATE FOR FULL AND EFFICACIOUS CARE FOR THE PATIENT, SUBJECT TO AND CONSISTENT WITH SURROGATE'S DECISION-MAKING AUTHORITY UNDER THIS ARTICLE.

(V) NOTHING IN THIS SUBDIVISION SHALL IMPOSE AN OBLIGATION ON AN ATTENDING PHYSICIAN TO EVALUATE A PATIENT FOR MENTAL RETARDATION, AS DEFINED IN SECTION 1.03 OF THE MENTAL HYGIENE LAW, OR A SIMILAR IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR UNLESS IT IS READILY APPARENT THAT THE PATIENT IS A PERSON WITH MENTAL RETARDATION OR A SIMILAR INTELLECTUAL OR ADAPTIVE IMPAIRMENT OR THE PATIENT IS IDENTIFIED AS SUCH PERSON.

S 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR PATIENTS. 1. AUTHORITY OF PARENT OR GUARDIAN. THE PARENT OR GUARDIAN OF A MINOR PATIENT SHALL HAVE THE AUTHORITY TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT, INCLUDING DECISIONS TO WITHHOLD OR WITHDRAW SUCH TREATMENT, SUBJECT TO THE PROVISIONS OF THIS SECTION AND SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

2. DECISION-MAKING STANDARDS AND PROCEDURES FOR MINOR PATIENT. (A) THE PARENT OR GUARDIAN OF A MINOR PATIENT SHALL MAKE DECISIONS IN ACCORDANCE WITH THE MINOR'S BEST INTERESTS, CONSISTENT WITH THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE, TAKING INTO ACCOUNT THE MINOR'S WISHES AS APPROPRIATE UNDER THE CIRCUMSTANCES.

(B) AN ATTENDING PHYSICIAN, IN CONSULTATION WITH A MINOR'S PARENT OR GUARDIAN, SHALL DETERMINE WHETHER A MINOR PATIENT HAS DECISION-MAKING CAPACITY FOR A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. IF THE MINOR HAS SUCH CAPACITY, A PARENT'S OR GUARDIAN'S DECISION

TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE MINOR MAY NOT BE IMPLEMENTED WITHOUT THE MINOR'S CONSENT.

(C) WHERE A PARENT OR GUARDIAN OF A MINOR PATIENT HAS MADE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT AND AN ATTENDING PHYSICIAN HAS REASON TO BELIEVE THAT THE MINOR PATIENT HAS A PARENT OR GUARDIAN WHO HAS NOT BEEN INFORMED OF THE DECISION, INCLUDING A NON-CUSTODIAL PARENT OR GUARDIAN, AN ATTENDING PHYSICIAN OR SOMEONE ACTING ON HIS OR HER BEHALF, SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE UNINFORMED PARENT OR GUARDIAN HAS MAINTAINED SUBSTANTIAL AND CONTINUOUS CONTACT WITH THE MINOR AND, IF SO, SHALL MAKE DILIGENT EFFORTS TO NOTIFY THAT PARENT OR GUARDIAN PRIOR TO IMPLEMENTING THE DECISION.

3. DECISION-MAKING STANDARDS AND PROCEDURES FOR EMANCIPATED MINOR PATIENT. (A) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT IS AN EMANCIPATED MINOR PATIENT WITH DECISION-MAKING CAPACITY, THE PATIENT SHALL HAVE THE AUTHORITY TO DECIDE ABOUT LIFE-SUSTAINING TREATMENT. SUCH AUTHORITY SHALL INCLUDE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT IF AN ATTENDING PHYSICIAN AND THE ETHICS REVIEW COMMITTEE DETERMINE THAT THE DECISION ACCORDS WITH THE STANDARDS FOR SURROGATE DECISIONS FOR ADULTS, AND THE ETHICS REVIEW COMMITTEE APPROVES THE DECISION.

(B) IF THE HOSPITAL CAN READILY ASCERTAIN THE IDENTITY OF THE PARENTS OR GUARDIAN OF AN EMANCIPATED MINOR PATIENT, THE HOSPITAL SHALL NOTIFY SUCH PERSONS PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT PURSUANT TO THIS SUBDIVISION.

S 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN. 1. AN ATTENDING PHYSICIAN INFORMED OF A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT MADE PURSUANT TO THE STANDARDS OF THIS ARTICLE SHALL RECORD THE DECISION IN THE PATIENT'S MEDICAL RECORD, REVIEW THE MEDICAL BASIS FOR THE DECISION, AND SHALL EITHER: (A) IMPLEMENT THE DECISION, OR (B) PROMPTLY MAKE HIS OR HER OBJECTION TO THE DECISION AND THE REASONS FOR THE OBJECTION KNOWN TO THE DECISION-MAKER, AND EITHER MAKE ALL REASONABLE EFFORTS TO ARRANGE FOR THE TRANSFER OF THE PATIENT TO ANOTHER PHYSICIAN, IF NECESSARY, OR PROMPTLY REFER THE MATTER TO THE ETHICS REVIEW COMMITTEE.

2. IF AN ATTENDING PHYSICIAN HAS ACTUAL NOTICE OF THE FOLLOWING OBJECTIONS OR DISAGREEMENTS, HE OR SHE SHALL PROMPTLY REFER THE MATTER TO THE ETHICS REVIEW COMMITTEE IF THE OBJECTION OR DISAGREEMENT CANNOT OTHERWISE BE RESOLVED:

(A) A HEALTH OR SOCIAL SERVICES PRACTITIONER CONSULTED FOR AN INDEPENDENT DETERMINATION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY DISAGREES WITH THE ATTENDING PHYSICIAN'S DETERMINATION;

(B) ANY PERSON ON THE SURROGATE LIST OF THE PATIENT OBJECTS TO THE DESIGNATION OF THE SURROGATE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE; OR

(C) ANY PERSON ON THE SURROGATE LIST OF THE PATIENT OBJECTS TO A SURROGATE'S DECISION; OR

(D) A PARENT OR GUARDIAN OF A MINOR PATIENT OBJECTS TO THE DECISION BY ANOTHER PARENT OR GUARDIAN OF THE MINOR; OR

(E) A MINOR PATIENT REFUSES LIFE-SUSTAINING TREATMENT, AND THE MINOR'S PARENT OR GUARDIAN WISHES THE TREATMENT TO BE PROVIDED, OR THE MINOR PATIENT OBJECTS TO AN ATTENDING PHYSICIAN'S DETERMINATION ABOUT DECISION-MAKING CAPACITY OR RECOMMENDATION ABOUT LIFE-SUSTAINING TREATMENT.

3. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-Q OF THIS ARTICLE, IF A SURROGATE DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL OF WHICH IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE

DEATH OF THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT DOES NOT WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH THE SURROGATE'S DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A WILLING HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS ARTICLE.

S 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES. 1. IDENTIFYING ADULT PATIENTS WITHOUT SURROGATES. WITHIN A REASONABLE TIME AFTER ADMISSION AS AN INPATIENT TO THE HOSPITAL OF EACH ADULT PATIENT, THE HOSPITAL SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE PATIENT HAS APPOINTED A HEALTH CARE AGENT OR IF AT LEAST ONE INDIVIDUAL IS AVAILABLE TO SERVE AS THE PATIENT'S SURROGATE IN THE EVENT THE PATIENT LOSES DECISION-MAKING CAPACITY. IF NO SUCH POTENTIAL SURROGATE IS IDENTIFIED, THE HOSPITAL SHALL IDENTIFY, TO THE EXTENT REASONABLY POSSIBLE, THE PATIENT'S WISHES AND PREFERENCES, INCLUDING THE PATIENT'S RELIGIOUS AND MORAL BELIEFS, ABOUT PENDING HEALTH CARE DECISIONS, AND SHALL RECORD ITS FINDINGS IN THE PATIENT'S MEDICAL RECORD.

2. DECISION-MAKING STANDARDS AND PROCEDURES. ANY HEALTH CARE DECISION MADE PURSUANT TO THIS SECTION SHALL BE MADE IN ACCORDANCE WITH THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE AND SHALL NOT BE BASED ON THE FINANCIAL INTERESTS OF THE HOSPITAL OR ANY OTHER HEALTH CARE PROVIDER. THE PROCEDURES FOR MAKING HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES ARE SPECIFIED IN THE FOLLOWING SUBDIVISIONS. THE SPECIFIC PROCEDURES TO BE FOLLOWED DEPEND ON WHETHER THE DECISION INVOLVES ROUTINE MEDICAL TREATMENT, MAJOR MEDICAL TREATMENT, OR THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. IN ADDITION, CERTAIN ASPECTS OF THESE PROCEDURES DEPEND ON WHETHER THE PATIENT IS IN A GENERAL HOSPITAL OR A RESIDENTIAL HEALTH CARE FACILITY.

3. ROUTINE MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION, "ROUTINE MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE, OR PROCEDURE TO DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION, SUCH AS THE ADMINISTRATION OF MEDICATION, THE EXTRACTION OF BODILY FLUIDS FOR ANALYSIS, OR DENTAL CARE PERFORMED WITH A LOCAL ANESTHETIC, FOR WHICH HEALTH CARE PROVIDERS ORDINARILY DO NOT SEEK SPECIFIC CONSENT FROM THE PATIENT OR AUTHORIZED REPRESENTATIVE. IT SHALL NOT INCLUDE THE LONG-TERM PROVISION OF TREATMENT SUCH AS VENTILATOR SUPPORT OR A NASOGASTRIC TUBE BUT SHALL INCLUDE SUCH TREATMENT WHEN PROVIDED AS PART OF POST-OPERATIVE CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND RECOVERY IS REASONABLY EXPECTED WITHIN ONE MONTH OR LESS.

(B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, AN ATTENDING PHYSICIAN SHALL BE AUTHORIZED TO DECIDE ABOUT ROUTINE MEDICAL TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE. NOTHING IN THIS SUBDIVISION SHALL REQUIRE HEALTH CARE PROVIDERS TO OBTAIN SPECIFIC CONSENT FOR TREATMENT WHERE SPECIFIC CONSENT IS NOT OTHERWISE REQUIRED BY LAW.

4. MAJOR MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION, "MAJOR MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE OR PROCEDURE TO DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION: (I) WHERE GENERAL ANESTHETIC IS USED; OR (II) WHICH INVOLVES ANY SIGNIFICANT RISK; OR (III) WHICH INVOLVES ANY SIGNIFICANT INVASION OF BODILY INTEGRITY REQUIRING AN INCISION, PRODUCING SUBSTANTIAL PAIN, DISCOMFORT, DEBILITATION OR HAVING A SIGNIFICANT RECOVERY PERIOD; OR (IV) WHICH INVOLVES THE USE OF PHYSICAL RESTRAINTS, AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER, EXCEPT IN AN EMERGENCY; OR (V) WHICH

INVOLVES THE USE OF PSYCHOACTIVE MEDICATIONS, EXCEPT WHEN PROVIDED AS PART OF POST-OPERATIVE CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND TREATMENT IS REASONABLY EXPECTED TO BE ADMINISTERED OVER A PERIOD OF FORTY-EIGHT HOURS OR LESS, OR WHEN PROVIDED IN AN EMERGENCY.

(B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, A DECISION TO PROVIDE MAJOR MEDICAL TREATMENT, MADE IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS, SHALL BE AUTHORIZED FOR AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE.

(I) AN ATTENDING PHYSICIAN SHALL MAKE A RECOMMENDATION IN CONSULTATION WITH HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE.

(II) IN A GENERAL HOSPITAL, AT LEAST ONE OTHER PHYSICIAN DESIGNATED BY THE HOSPITAL MUST INDEPENDENTLY DETERMINE THAT THE RECOMMENDATION IS APPROPRIATE.

(III) IN A RESIDENTIAL HEALTH CARE FACILITY, THE MEDICAL DIRECTOR OF THE FACILITY, OR A PHYSICIAN DESIGNATED BY THE MEDICAL DIRECTOR, MUST INDEPENDENTLY DETERMINE THAT THE RECOMMENDATION IS APPROPRIATE; PROVIDED THAT IF THE MEDICAL DIRECTOR IS THE PATIENT'S ATTENDING PHYSICIAN, A DIFFERENT PHYSICIAN DESIGNATED BY THE RESIDENTIAL HEALTH CARE FACILITY MUST MAKE THIS INDEPENDENT DETERMINATION. ANY HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE FACILITY MAY PROVIDE A SECOND OPINION FOR DECISIONS ABOUT PHYSICAL RESTRAINTS MADE PURSUANT TO THIS SUBDIVISION.

5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. (A) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, A COURT OF COMPETENT JURISDICTION MAY MAKE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE IF THE COURT FINDS THAT THE DECISION ACCORDS WITH STANDARDS FOR DECISIONS FOR ADULTS SET FORTH IN SUBDIVISIONS FOUR AND FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

(B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING AND COMPETENT TO ACT, AND THE ATTENDING PHYSICIAN, WITH INDEPENDENT CONCURRENCE OF A SECOND PHYSICIAN DESIGNATED BY THE HOSPITAL, DETERMINES TO A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT:

(I) LIFE-SUSTAINING TREATMENT OFFERS THE PATIENT NO MEDICAL BENEFIT BECAUSE THE PATIENT WILL DIE IMMINENTLY, EVEN IF THE TREATMENT IS PROVIDED; AND

(II) THE PROVISION OF LIFE-SUSTAINING TREATMENT WOULD VIOLATE ACCEPTED MEDICAL STANDARDS, SUCH TREATMENT MAY BE WITHDRAWN OR WITHHELD FROM AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE, WITHOUT JUDICIAL APPROVAL. THIS SUBDIVISION SHALL NOT APPLY TO ANY TREATMENT NECESSARY TO ALLEVIATE PAIN OR DISCOMFORT.

6. PHYSICIAN OBJECTION. IF A PHYSICIAN CONSULTED FOR A CONCURRING OPINION OBJECTS TO AN ATTENDING PHYSICIAN'S RECOMMENDATION OR DETERMINATION MADE PURSUANT TO THIS SECTION, OR A MEMBER OF THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OBJECTS TO AN ATTENDING PHYSICIAN'S RECOMMENDATION ABOUT MAJOR MEDICAL TREATMENT OR TREATMENT WITHOUT MEDICAL BENEFIT, THE MATTER SHALL BE REFERRED TO THE ETHICS REVIEW COMMITTEE IF IT CANNOT BE OTHERWISE RESOLVED.

S 2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE FACILITY. 1. IF A PATIENT IS TRANSFERRED FROM A MENTAL HYGIENE FACILITY TO A HOSPITAL, OTHER THAN A RESIDENTIAL CARE FACILITY, THE HOSPITAL

SHALL NOTIFY THE FACILITY DIRECTOR OR THE MENTAL HEALTH REGIONAL DIRECTOR WHEN:

(A) A DECISION IS MADE, PURSUANT TO SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G OF THIS ARTICLE, REGARDING MAJOR MEDICAL TREATMENT FOR AN ADULT WITHOUT A SURROGATE; OR

(B) A SURROGATE OR A PARENT OF A MINOR CHILD CONSENTS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE PATIENT PURSUANT TO THIS ARTICLE. A MENTAL HYGIENE FACILITY DIRECTOR WHO RECEIVES NOTICES PURSUANT TO THIS SUBDIVISION SHALL PROMPTLY CONVEY SUCH NOTICES TO THE MENTAL HYGIENE LEGAL SERVICE.

2. NOTHING IN THIS ARTICLE SHALL AFFECT OR DIMINISH THE AUTHORITY OF A SURROGATE DECISION-MAKING PANEL CONVENED TO DECIDE ABOUT MAJOR MEDICAL TREATMENT PURSUANT TO ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW. HEALTH CARE PROVIDERS MAY SEEK AUTHORIZATION FOR MAJOR MEDICAL TREATMENT FOR A PATIENT TRANSFERRED FROM A MENTAL HYGIENE FACILITY WHO HAS NO SURROGATE BY COMMENCING THE PROCESS SET FORTH IN SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G OF THIS ARTICLE, OR BY COMMENCING A PROCEEDING PURSUANT TO ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW IN ANY COUNTY WHERE SUCH FACILITY IS OPERATING. IF A PROCEEDING PURSUANT TO ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW IS COMMENCED, THE DECISION AND ALL SUBSEQUENT DECISIONS RELATED TO THE MAJOR MEDICAL TREATMENT PROPOSED IN THE INITIAL ARTICLE EIGHTY PROCEEDING SHALL BE MADE PURSUANT TO SUCH ARTICLE, UNLESS THE DECISION MUST BE EXPEDITED TO MEET THE PATIENT'S MEDICAL NEEDS.

S 2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE. AN ORDER NOT TO RESUSCITATE SHALL BE WRITTEN IN THE PATIENT'S MEDICAL RECORD. CONSENT TO AN ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE CONSENT TO WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY RESUSCITATION.

S 2994-J. REVOCATION OF CONSENT. 1. A PATIENT, SURROGATE, OR PARENT OR GUARDIAN OF A MINOR PATIENT MAY AT ANY TIME REVOKE HIS OR HER CONSENT TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT BY INFORMING AN ATTENDING PHYSICIAN OR A MEMBER OF THE MEDICAL OR NURSING STAFF OF THE REVOCATION.

2. AN ATTENDING PHYSICIAN INFORMED OF A REVOCATION OF CONSENT MADE PURSUANT TO THIS SECTION SHALL IMMEDIATELY:

(A) RECORD THE REVOCATION IN THE PATIENT'S MEDICAL RECORD;

(B) CANCEL ANY ORDERS IMPLEMENTING THE DECISION TO WITHHOLD OR WITHDRAW TREATMENT; AND

(C) NOTIFY THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OF THE REVOCATION AND ANY CANCELLATIONS.

3. ANY MEMBER OF THE MEDICAL OR NURSING STAFF INFORMED OF A REVOCATION MADE PURSUANT TO THIS SECTION SHALL IMMEDIATELY NOTIFY AN ATTENDING PHYSICIAN OF THE REVOCATION.

S 2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS. 1. HOSPITALS SHALL ADOPT WRITTEN POLICIES REQUIRING IMPLEMENTATION AND REGULAR REVIEW OF DECISIONS TO WITHHOLD OR WITHDREW LIFE-SUSTAINING TREATMENT IN ACCORDANCE WITH ACCEPTED MEDICAL STANDARDS. HOSPITALS SHALL ALSO DEVELOP POLICIES IN ACCORD WITH ACCEPTED MEDICAL STANDARDS REGARDING DOCUMENTATION OF CLINICAL DETERMINATIONS AND DECISIONS BY SURROGATES AND HEALTH CARE PROVIDERS PURSUANT TO THIS ARTICLE.

2. IF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT HAS BEEN MADE PURSUANT TO THIS ARTICLE, AND AN ATTENDING PHYSICIAN DETERMINES AT ANY TIME THAT THE DECISION IS NO LONGER APPROPRIATE OR AUTHORIZED BECAUSE THE PATIENT HAS REGAINED DECISION-MAKING CAPACITY OR BECAUSE THE PATIENT'S CONDITION HAS OTHERWISE IMPROVED, THE PHYSICIAN SHALL IMMEDIATELY:

(A) INCLUDE SUCH DETERMINATION IN THE PATIENT'S MEDICAL RECORD;

(B) CANCEL ANY ORDERS OR PLANS OF CARE IMPLEMENTING THE DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT;

(C) NOTIFY THE PERSON WHO MADE THE DECISION TO WITHHOLD OR WITHDRAW TREATMENT, OR, IF THAT PERSON IS NOT REASONABLY AVAILABLE, TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAILABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE; AND

(D) NOTIFY THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OF ANY CANCELLED ORDERS OR PLANS OF CARE.

S 2994-L. INTERINSTITUTIONAL TRANSFERS. IF A PATIENT WITH AN ORDER TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT IS TRANSFERRED FROM A MENTAL HYGIENE FACILITY OR FROM A HOSPITAL TO A DIFFERENT HOSPITAL, ANY SUCH ORDER OR PLAN SHALL REMAIN EFFECTIVE UNTIL AN ATTENDING PHYSICIAN FIRST EXAMINES THE TRANSFERRED PATIENT, WHEREUPON AN ATTENDING PHYSICIAN MUST EITHER:

1. ISSUE APPROPRIATE ORDERS TO CONTINUE THE PRIOR ORDER OR PLAN. SUCH ORDERS MAY BE ISSUED WITHOUT OBTAINING ANOTHER CONSENT TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT PURSUANT TO THIS ARTICLE; OR

2. CANCEL SUCH ORDER, IF THE ATTENDING PHYSICIAN DETERMINES THAT THE ORDER IS NO LONGER APPROPRIATE OR AUTHORIZED. BEFORE CANCELING THE ORDER THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE PERSON WHO MADE THE DECISION TO WITHHOLD OR WITHDRAW TREATMENT AND THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OF ANY SUCH CANCELLATION. IF SUCH NOTICE CANNOT REASONABLY BE MADE PRIOR TO CANCELING THE ORDER OR PLAN, THE ATTENDING PHYSICIAN SHALL MAKE SUCH NOTICE AS SOON AS REASONABLY PRACTICABLE AFTER CANCELLATION.

S 2994-M. ETHICS REVIEW COMMITTEES. 1. ESTABLISHMENT OF AN ETHICS REVIEW COMMITTEE, WRITTEN POLICY. EACH HOSPITAL SHALL ESTABLISH AT LEAST ONE ETHICS REVIEW COMMITTEE OR PARTICIPATE IN AN ETHICS REVIEW COMMITTEE THAT SERVES MORE THAN ONE HOSPITAL, AND SHALL ADOPT A WRITTEN POLICY GOVERNING COMMITTEE FUNCTIONS, COMPOSITION, AND PROCEDURE, IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE. A HOSPITAL MAY DESIGNATE AN EXISTING COMMITTEE, OR SUBCOMMITTEE THEREOF, TO CARRY OUT THE FUNCTIONS OF THE ETHICS REVIEW COMMITTEE PROVIDED THE REQUIREMENTS OF THIS SECTION ARE SATISFIED.

2. FUNCTIONS OF THE ETHICS REVIEW COMMITTEE. (A) THE ETHICS REVIEW COMMITTEE SHALL CONSIDER AND RESPOND TO ANY HEALTH CARE MATTER PRESENTED TO IT BY A PERSON CONNECTED WITH THE CASE.

(B) THE ETHICS REVIEW COMMITTEE RESPONSE TO A HEALTH CARE MATTER MAY INCLUDE:

(I) PROVIDING ADVICE ON THE ETHICAL ASPECTS OF PROPOSED HEALTH CARE;

(II) MAKING A RECOMMENDATION ABOUT PROPOSED HEALTH CARE; OR

(III) PROVIDING ASSISTANCE IN RESOLVING DISPUTES ABOUT PROPOSED HEALTH CARE.

(C) RECOMMENDATIONS AND ADVICE BY THE ETHICS REVIEW COMMITTEE SHALL BE ADVISORY AND NONBINDING, EXCEPT AS SPECIFIED IN SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE AND SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-E OF THIS ARTICLE.

3. COMMITTEE MEMBERSHIP. IN A RESIDENTIAL HEALTH CARE FACILITY THE ETHICS REVIEW COMMITTEE SHALL HAVE AT LEAST FIVE MEMBERS. AT LEAST THREE COMMITTEE MEMBERS MUST BE HEALTH OR SOCIAL SERVICES PRACTITIONERS, AT LEAST ONE OF WHOM MUST BE A REGISTERED NURSE AND ONE OF WHOM MUST BE A PHYSICIAN. AT LEAST TWO COMMITTEE MEMBERS MUST BE MEMBERS OF THE RESIDENTS' COUNCIL OF THE FACILITY (OR OF ANOTHER FACILITY THAT PARTICIPATES IN THE COMMITTEE) OR BE A PERSON NOT AFFILIATED WITH THE FACILITY WHO IS

A FAMILY MEMBER OF A CURRENT OR FORMER RESIDENT AT THE SAME OR ANOTHER RESIDENTIAL HEALTH CARE FACILITY OR A PERSON WHO HAS EXPERTISE IN OR A DEMONSTRATED COMMITMENT TO PATIENT RIGHTS OR TO THE CARE AND TREATMENT OF THE ELDERLY OR NURSING HOME RESIDENTS THROUGH PROFESSIONAL OR COMMUNITY ACTIVITIES, OTHER THAN ACTIVITIES PERFORMED AS A HEALTH CARE PROVIDER.

4. PROCEDURES FOR ETHICS REVIEW COMMITTEE. (A) THESE PROCEDURES ARE REQUIRED ONLY WHEN (I) THE ETHICS REVIEW COMMITTEE IS CONVENED TO REVIEW A DECISION BY A SURROGATE TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR (A) A PATIENT IN A RESIDENTIAL HEALTH CARE FACILITY PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE, (B) A PATIENT IN A GENERAL HOSPITAL PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE, OR (C) AN EMANCIPATED MINOR PATIENT PURSUANT TO SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-E OF THIS ARTICLE; OR (II) WHEN A PERSON CONNECTED WITH THE CASE REQUESTS THE ETHICS REVIEW COMMITTEE TO PROVIDE ASSISTANCE IN RESOLVING A DISPUTE ABOUT PROPOSED CARE. NOTHING IN THIS SECTION SHALL BAR HEALTH CARE PROVIDERS FROM FIRST STRIVING TO RESOLVE DISPUTES THROUGH LESS FORMAL MEANS, INCLUDING THE INFORMAL SOLICITATION OF ETHICAL ADVICE FROM ANY SOURCE.

(B)(I) A PERSON CONNECTED WITH THE CASE MAY NOT PARTICIPATE AS AN ETHICS REVIEW COMMITTEE MEMBER IN THE CONSIDERATION OF THAT CASE.

(II) THE ETHICS REVIEW COMMITTEE SHALL RESPOND PROMPTLY, AS REQUIRED BY THE CIRCUMSTANCES, TO ANY REQUEST FOR ASSISTANCE IN RESOLVING A DISPUTE OR CONSIDERATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE MADE BY A PERSON CONNECTED WITH THE CASE. THE COMMITTEE SHALL PERMIT PERSONS CONNECTED WITH THE CASE TO PRESENT THEIR VIEWS TO THE COMMITTEE, AND TO HAVE THE OPTION OF BEING ACCOMPANIED BY AN ADVISOR WHEN PARTICIPATING IN A COMMITTEE MEETING.

(III) THE ETHICS REVIEW COMMITTEE SHALL PROMPTLY PROVIDE THE PATIENT, WHERE THERE IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE INFORMATION, THE SURROGATE, OTHER PERSONS ON THE SURROGATE LIST DIRECTLY INVOLVED IN THE DECISION OR DISPUTE REGARDING THE PATIENT'S CARE, ANY PARENT OR GUARDIAN OF A MINOR PATIENT DIRECTLY INVOLVED IN THE DECISION OR DISPUTE REGARDING THE MINOR PATIENT'S CARE, AN ATTENDING PHYSICIAN, THE HOSPITAL, AND OTHER PERSONS THE COMMITTEE DEEMS APPROPRIATE, WITH THE FOLLOWING:

(A) NOTICE OF ANY PENDING CASE CONSIDERATION CONCERNING THE PATIENT, INCLUDING, FOR PATIENTS, PERSONS ON THE SURROGATE LIST, PARENTS AND GUARDIANS, INFORMATION ABOUT THE ETHICS REVIEW COMMITTEE'S PROCEDURES, COMPOSITION AND FUNCTION; AND

(B) THE COMMITTEE'S RESPONSE TO THE CASE, INCLUDING A WRITTEN STATEMENT OF THE REASONS FOR APPROVING OR DISAPPROVING THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT FOR DECISIONS CONSIDERED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE. THE COMMITTEE'S RESPONSE TO THE CASE SHALL BE INCLUDED IN THE PATIENT'S MEDICAL RECORD.

(IV) FOLLOWING ETHICS REVIEW COMMITTEE CONSIDERATION OF A CASE CONCERNING THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT, TREATMENT SHALL NOT BE WITHDRAWN OR WITHHELD UNTIL THE PERSONS IDENTIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH HAVE BEEN INFORMED OF THE COMMITTEE'S RESPONSE TO THE CASE.

5. ACCESS TO MEDICAL RECORDS AND INFORMATION; PATIENT CONFIDENTIALITY. ETHICS REVIEW COMMITTEE MEMBERS AND CONSULTANTS SHALL HAVE ACCESS TO MEDICAL INFORMATION AND MEDICAL RECORDS NECESSARY TO PERFORM THEIR FUNCTION UNDER THIS ARTICLE. ANY SUCH INFORMATION OR RECORDS DISCLOSED TO COMMITTEE MEMBERS, CONSULTANTS, OR OTHERS SHALL BE KEPT CONFIDENTIAL EXCEPT TO THE EXTENT NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE OR AS OTHERWISE PROVIDED BY LAW.

6. ETHICS REVIEW COMMITTEE CONFIDENTIALITY. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW COMMITTEE SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE RELEASED BY COMMITTEE MEMBERS, COMMITTEE CONSULTANTS, OR OTHER PERSONS PRIVY TO SUCH PROCEEDINGS AND RECORDS; THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW COMMITTEE SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION IN ANY MANNER, INCLUDING UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ARTICLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES; AND, NO PERSON SHALL TESTIFY AS TO THE PROCEEDINGS OR RECORDS OF AN ETHICS REVIEW COMMITTEE, NOR SHALL SUCH PROCEEDINGS AND RECORDS OTHERWISE BE ADMISSIBLE AS EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY KIND IN ANY COURT OR BEFORE ANY OTHER TRIBUNAL, BOARD, AGENCY OR PERSON, EXCEPT THAT:

(A) ETHICS REVIEW COMMITTEE PROCEEDINGS AND RECORDS, IN CASES WHERE A COMMITTEE APPROVES OR DISAPPROVES OF THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT PURSUANT TO SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE, OR SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-E OF THIS ARTICLE, MAY BE OBTAINED BY OR RELEASED TO THE DEPARTMENT;

(B) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE PATIENT, THE SURROGATE, OTHER PERSONS ON THE SURROGATE LIST, OR A PARENT OR GUARDIAN OF A MINOR PATIENT FROM VOLUNTARILY DISCLOSING, RELEASING OR TESTIFYING ABOUT COMMITTEE PROCEEDINGS OR RECORDS; AND

(C) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE STATE COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED FROM REQUIRING ANY INFORMATION, REPORT OR RECORD FROM A HOSPITAL IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45.09 OF THE MENTAL HYGIENE LAW.

S 2994-N. CONSCIENCE OBJECTIONS. 1. PRIVATE HOSPITALS. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE A PRIVATE HOSPITAL TO HONOR A HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE IF:

(A) THE DECISION IS CONTRARY TO A FORMALLY ADOPTED POLICY OF THE HOSPITAL THAT IS EXPRESSLY BASED ON SINCERELY HELD RELIGIOUS BELIEFS OR SINCERELY HELD MORAL CONVICTIONS CENTRAL TO THE FACILITY'S OPERATING PRINCIPLES;

(B) THE HOSPITAL HAS INFORMED THE PATIENT, FAMILY, OR SURROGATE OF SUCH POLICY PRIOR TO OR UPON ADMISSION, IF REASONABLY POSSIBLE; AND

(C) THE PATIENT IS TRANSFERRED PROMPTLY TO ANOTHER HOSPITAL THAT IS REASONABLY ACCESSIBLE UNDER THE CIRCUMSTANCES AND WILLING TO HONOR THE DECISION AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE. IF THE PATIENT'S FAMILY OR SURROGATE IS UNABLE OR UNWILLING TO ARRANGE SUCH A TRANSFER, THE HOSPITAL MAY INTERVENE TO FACILITATE SUCH A TRANSFER. IF SUCH A TRANSFER IS NOT EFFECTED, THE HOSPITAL SHALL SEEK JUDICIAL RELIEF IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS ARTICLE OR HONOR THE DECISION.

2. INDIVIDUAL HEALTH CARE PROVIDERS. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE AN INDIVIDUAL AS A HEALTH CARE PROVIDER TO HONOR A HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE IF:

(A) THE DECISION IS CONTRARY TO THE INDIVIDUAL'S SINCERELY HELD RELIGIOUS BELIEFS OR SINCERELY HELD MORAL CONVICTION; AND

(B) THE INDIVIDUAL HEALTH CARE PROVIDER PROMPTLY INFORMS THE PERSON WHO MADE THE DECISION AND THE HOSPITAL OF HIS OR HER REFUSAL TO HONOR THE DECISION. IN SUCH EVENT, THE HOSPITAL SHALL PROMPTLY TRANSFER RESPONSIBILITY FOR THE PATIENT TO ANOTHER INDIVIDUAL HEALTH CARE PROVIDER WILLING TO HONOR THE DECISION. THE INDIVIDUAL HEALTH CARE PROVIDER SHALL COOPERATE IN FACILITATING SUCH TRANSFER AND COMPLY WITH SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE.

S 2994-O. IMMUNITY. 1. ETHICS REVIEW COMMITTEE. NO PERSON SHALL BE SUBJECT TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT, FOR ACTS PERFORMED REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE AS A MEMBER OF OR AS A CONSULTANT TO AN ETHICS REVIEW COMMITTEE OR AS A PARTICIPANT IN AN ETHICS REVIEW COMMITTEE MEETING.

2. PROVIDERS. NO HEALTH CARE PROVIDER OR EMPLOYEE THEREOF SHALL BE SUBJECTED TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH A HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE.

3. SURROGATES AND GUARDIANS. NO PERSON SHALL BE SUBJECTED TO CRIMINAL OR CIVIL LIABILITY FOR MAKING A HEALTH CARE DECISION REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE.

S 2994-P. LIABILITY FOR HEALTH CARE COSTS. LIABILITY FOR THE COST OF HEALTH CARE PROVIDED TO AN ADULT PATIENT PURSUANT TO THIS ARTICLE SHALL BE THE SAME AS IF THE HEALTH CARE WERE PROVIDED PURSUANT TO THE PATIENT'S DECISION. NO PERSON SHALL BECOME LIABLE FOR THE COST OF HEALTH CARE FOR A MINOR SOLELY BY VIRTUE OF MAKING A DECISION AS A GUARDIAN OF A MINOR PURSUANT TO THIS ARTICLE.

S 2994-Q. EFFECT ON OTHER RIGHTS. 1. NOTHING IN THIS ARTICLE CREATES, EXPANDS, DIMINISHES, IMPAIRS, OR SUPERSEDES ANY AUTHORITY THAT AN INDIVIDUAL MAY HAVE UNDER LAW TO MAKE OR EXPRESS DECISIONS, WISHES, OR INSTRUCTIONS REGARDING HEALTH CARE ON HIS OR HER OWN BEHALF, INCLUDING DECISIONS ABOUT LIFE-SUSTAINING TREATMENT.

2. NOTHING IN THIS ARTICLE SHALL AFFECT EXISTING LAW CONCERNING IMPLIED CONSENT TO HEALTH CARE IN AN EMERGENCY.

3. NOTHING IN THIS ARTICLE IS INTENDED TO PERMIT OR PROMOTE SUICIDE, ASSISTED SUICIDE, OR EUTHANASIA.

4. THIS ARTICLE SHALL NOT AFFECT EXISTING LAW WITH RESPECT TO STERILIZATION.

5. NOTHING IN THIS ARTICLE DIMINISHES THE DUTY OF PARENTS AND LEGAL GUARDIANS UNDER EXISTING LAW TO CONSENT TO TREATMENT FOR MINORS.

S 2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE GUARDIAN FOR MINOR PATIENT. 1. SPECIAL PROCEEDING. ANY PERSON CONNECTED WITH THE CASE AND ANY MEMBER OF THE HOSPITAL ETHICS REVIEW COMMITTEE MAY COMMENCE A SPECIAL PROCEEDING IN A COURT OF COMPETENT JURISDICTION WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE.

2. COURT ORDERS DESIGNATING SURROGATE. A COURT OF COMPETENT JURISDICTION MAY DESIGNATE ANY INDIVIDUAL FROM THE SURROGATE LIST TO ACT AS SURROGATE, REGARDLESS OF THAT INDIVIDUAL'S PRIORITY ON THE LIST, IF THE COURT DETERMINES THAT SUCH APPOINTMENT WOULD BEST ACCORD WITH THE PATIENT'S WISHES OR, IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN, WITH THE PATIENT'S BEST INTERESTS. UNLESS OTHERWISE DETERMINED BY A COURT, NO SURROGATE DECISION MADE PRIOR TO AN ORDER DESIGNATING A SURROGATE SHALL BE DEEMED TO HAVE BEEN INVALID BECAUSE OF THE ISSUANCE OF A DESIGNATING ORDER.

3. COURT ORDERS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. A COURT OF COMPETENT JURISDICTION MAY AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT FROM A PERSON IF THE COURT DETERMINES THAT THE PERSON LACKS DECISION-MAKING CAPACITY, AND WITHDRAWING OR WITHHOLDING THE TREATMENT WOULD ACCORD WITH THE STANDARDS SET FORTH IN SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

4. HEALTH CARE GUARDIAN FOR A MINOR PATIENT. (A) NO APPOINTMENT SHALL BE MADE PURSUANT TO THIS SUBDIVISION IF A PARENT OR LEGAL GUARDIAN OF THE PERSON IS AVAILABLE, WILLING, AND COMPETENT TO DECIDE ABOUT TREATMENT FOR THE MINOR.

(B) THE FOLLOWING PERSONS MAY COMMENCE A SPECIAL PROCEEDING IN A COURT OF COMPETENT JURISDICTION TO SEEK APPOINTMENT AS THE HEALTH CARE GUARDIAN OF A MINOR PATIENT SOLELY FOR THE PURPOSE OF DECIDING ABOUT LIFE-SUSTAINING TREATMENT PURSUANT TO THIS ARTICLE:

(I) THE HOSPITAL ADMINISTRATOR;

(II) AN ATTENDING PHYSICIAN;

(III) THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR THE LOCAL COMMISSIONER OF HEALTH, AUTHORIZED TO MAKE MEDICAL TREATMENT DECISIONS FOR THE MINOR PURSUANT TO SECTION THREE HUNDRED EIGHTY-THREE-B OF THE SOCIAL SERVICES LAW; OR

(IV) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, WHO HAS ASSUMED CARE OF THE MINOR FOR A SUBSTANTIAL AND CONTINUOUS PERIOD OF TIME.

(C) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO THE PERSONS IDENTIFIED IN SECTION ONE THOUSAND SEVEN HUNDRED FIVE OF THE SURROGATE'S COURT PROCEDURE ACT.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SEEKING APPOINTMENT OR BEING APPOINTED AS A HEALTH CARE GUARDIAN SHALL NOT OTHERWISE AFFECT THE LEGAL STATUS OR RIGHTS OF THE INDIVIDUAL SEEKING OR OBTAINING SUCH APPOINTMENT.

S 2994-S. REMEDY. 1. ANY HOSPITAL OR ATTENDING PHYSICIAN THAT REFUSES TO HONOR A HEALTH CARE DECISION BY A SURROGATE MADE PURSUANT TO THIS ARTICLE AND IN ACCORD WITH THE STANDARDS SET FORTH IN THIS ARTICLE SHALL NOT BE ENTITLED TO COMPENSATION FOR TREATMENT, SERVICES, OR PROCEDURES REFUSED BY THE SURROGATE, EXCEPT THAT THIS SUBDIVISION SHALL NOT APPLY:

(A) WHEN A HOSPITAL OR PHYSICIAN EXERCISES THE RIGHTS GRANTED BY SECTION TWENTY-NINE HUNDRED NINETY-FOUR-N OF THIS ARTICLE, PROVIDED THAT THE PHYSICIAN OR HOSPITAL PROMPTLY FULFILLS THE OBLIGATIONS SET FORTH IN SECTION TWENTY-NINE HUNDRED NINETY-FOUR-N OF THIS ARTICLE;

(B) WHILE A MATTER IS UNDER CONSIDERATION BY THE ETHICS REVIEW COMMITTEE, PROVIDED THAT THE MATTER IS PROMPTLY REFERRED TO AND CONSIDERED BY THE COMMITTEE;

(C) IN THE EVENT OF A DISPUTE BETWEEN INDIVIDUALS ON THE SURROGATE LIST; OR

(D) IF THE PHYSICIAN OR HOSPITAL PREVAILS IN ANY LITIGATION CONCERNING THE SURROGATE'S DECISION TO REFUSE THE TREATMENT, SERVICES OR PROCEDURE. NOTHING IN THIS SECTION SHALL DETERMINE OR AFFECT HOW DISPUTES AMONG INDIVIDUALS ON THE SURROGATE LIST ARE RESOLVED.

2. THE REMEDY PROVIDED IN THIS SECTION IS IN ADDITION TO AND CUMULATIVE WITH ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY OR BY ADMINISTRATIVE PROCEEDINGS TO A PATIENT, A HEALTH CARE AGENT APPOINTED PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER, OR A PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS PURSUANT TO THIS ARTICLE, INCLUDING INJUNCTIVE AND DECLARATORY RELIEF, AND ANY OTHER PROVISIONS OF THIS CHAPTER GOVERNING FINES, PENALTIES, OR FORFEITURES.

S 2994-T. REGULATIONS. 1. THE COMMISSIONER SHALL ESTABLISH SUCH REGULATIONS AS MAY BE NECESSARY TO IMPLEMENT THIS ARTICLE.

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 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 OR TO PERSONS ON THE SURROGATE LIST KNOWN TO THE HOSPITAL, OR TO THE PARENTS OR GUARDIANS OF MINOR PATIENTS, 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.

ARTICLE 29-CCC
NONHOSPITAL ORDERS NOT TO RESUSCITATE

SECTION 2994-AA. DEFINITIONS.
2994-BB. GENERAL PROVISIONS.
2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE.
2994-DD. MANAGING A NONHOSPITAL ORDER NOT TO RESUSCITATE.
2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCITATE.
2994-FF. INTERINSTITUTIONAL TRANSFER.
2994-GG. IMMUNITY.

S 2994-AA. DEFINITIONS. 1. "ADULT" MEANS ANY PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER, OR IS THE PARENT OF A CHILD OR HAS MARRIED.

2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND CARE OF THE PATIENT. WHERE MORE THAN ONE PHYSICIAN SHARES SUCH RESPONSIBILITY, ANY SUCH PHYSICIAN MAY ACT AS THE ATTENDING PHYSICIAN PURSUANT TO THIS ARTICLE.

3. "CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF A NONHOSPITAL ORDER NOT TO RESUSCITATE, INCLUDING THE BENEFITS AND DISADVANTAGES OF SUCH AN ORDER, AND TO REACH AN INFORMED DECISION REGARDING THE ORDER.

4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY ARREST. SUCH TERM SHALL NOT INCLUDE MEASURES TO IMPROVE VENTILATION AND CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

5. "EMERGENCY MEDICAL SERVICES PERSONNEL" MEANS THE PERSONNEL OF A SERVICE OR AGENCY ENGAGED IN PROVIDING INITIAL EMERGENCY MEDICAL ASSISTANCE, INCLUDING BUT NOT LIMITED TO FIRST RESPONDERS, EMERGENCY MEDICAL TECHNICIANS, ADVANCED EMERGENCY MEDICAL TECHNICIANS AND PERSONNEL ENGAGED IN PROVIDING HEALTH CARE AT CORRECTIONAL FACILITIES, AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW.

6. "HEALTH CARE AGENT" MEANS A HEALTH CARE AGENT OF THE PATIENT DESIGNATED PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER.

7. "HEALTH OR SOCIAL SERVICES PRACTITIONER" MEANS A REGISTERED PROFESSIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT, PSYCHOLOGIST OR CERTIFIED SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT TO THE EDUCATION LAW AND QUALIFIED TO PROVIDE A SECOND OPINION OF CAPACITY AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER.

8. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER AND A RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER OR A HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION 1.03 OF THE MENTAL HYGIENE LAW OR A SCHOOL NAMED IN SECTION 13.17 OF THE MENTAL HYGIENE LAW.

9. "HOSPITAL EMERGENCY SERVICES PERSONNEL" MEANS THE PERSONNEL OF THE EMERGENCY SERVICE OF A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO EMERGENCY SERVICES ATTENDING PHYSICIANS, EMERGENCY SERVICES REGISTERED PROFESSIONAL NURSES, AND REGISTERED PROFESSIONAL NURSES, NURSING STAFF AND REGISTERED PHYSICIANS ASSISTANTS ASSIGNED TO THE GENERAL HOSPITAL'S EMERGENCY SERVICE.

10. "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.

11. "NONHOSPITAL ORDER NOT TO RESUSCITATE" MEANS AN ORDER THAT DIRECTS EMERGENCY MEDICAL SERVICES PERSONNEL AND HOSPITAL EMERGENCY SERVICES PERSONNEL NOT TO ATTEMPT CARDIOPULMONARY RESUSCITATION IN THE EVENT A PATIENT SUFFERS CARDIAC OR RESPIRATORY ARREST.

12. "PATIENT" MEANS A PERSON WHO HAS BEEN OR WHO MAY BE ISSUED A NONHOSPITAL ORDER NOT TO RESUSCITATE.

13. "SURROGATE" MEANS A PERSON OR COMMITTEE OF PERSONS WITH THE AUTHORITY TO CONSENT TO AN ORDER NOT TO RESUSCITATE PURSUANT TO ARTICLE TWENTY-NINE-B OR TWENTY-NINE-CC OF THIS CHAPTER.

S 2994-BB. GENERAL PROVISIONS. 1. (A) EMERGENCY MEDICAL SERVICES 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.

(B) A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE AN ORDER TO WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY RESUSCITATION.

2. A NONHOSPITAL ORDER NOT TO RESUSCITATE MAY BE ISSUED DURING HOSPITALIZATION TO TAKE EFFECT AFTER HOSPITALIZATION, OR MAY BE ISSUED FOR A PERSON WHO IS NOT A PATIENT IN, OR A RESIDENT OF, A HOSPITAL.

S 2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE. 1. AN ADULT WITH DECISION-MAKING CAPACITY, A HEALTH CARE AGENT, OR A SURROGATE MAY CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE ORALLY TO THE ATTENDING PHYSICIAN OR IN WRITING. IF A PATIENT CONSENTS TO A NONHOSPITAL ORDER NOT TO RESUSCITATE WHILE IN A CORRECTIONAL FACILITY, NOTICE OF THE PATIENT'S CONSENT SHALL BE GIVEN TO THE FACILITY DIRECTOR AND REASONABLE EFFORTS SHALL BE MADE TO NOTIFY AN INDIVIDUAL DESIGNATED BY THE PATIENT TO RECEIVE SUCH NOTICE PRIOR TO THE ISSUANCE OF THE NONHOSPITAL ORDER NOT TO RESUSCITATE. NOTIFICATION TO THE FACILITY DIRECTOR OR THE INDIVIDUAL DESIGNATED BY THE PATIENT SHALL NOT DELAY ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCITATE.

2. CONSENT BY A HEALTH CARE AGENT SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-C OF THIS CHAPTER.

3. CONSENT BY A SURROGATE SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-D OF THIS CHAPTER, EXCEPT THAT: (A) A SECOND DETERMINATION OF CAPACITY SHALL BE MADE BY A HEALTH OR SOCIAL SERVICES PRACTITIONER AS DEFINED IN SUBDIVISION SEVEN OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-AA OF THIS ARTICLE; AND (B) THE AUTHORITY OF THE ETHICS REVIEW COMMITTEE SET FORTH IN ARTICLE TWENTY-NINE-CC OF THIS CHAPTER SHALL APPLY ONLY TO NONHOSPITAL ORDERS ISSUED IN A HOSPITAL.

4. (A) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCITATE FOR PATIENTS IN A CORRECTIONAL FACILITY, SUCH SECOND PHYSICIAN SHALL BE SELECTED BY THE CHIEF MEDICAL OFFICER OF THE DEPARTMENT OF CORRECTIONS OR HIS OR HER DESIGNEE.

(B) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCITATE FOR HOSPICE AND HOME CARE PATIENTS, SUCH SECOND PHYSICIAN SHALL BE SELECTED BY THE HOSPICE MEDICAL DIRECTOR OR HOSPICE NURSE COORDINATOR DESIGNATED BY THE MEDICAL DIRECTOR OR BY THE HOME CARE SERVICES AGENCY DIRECTOR OF PATIENT CARE SERVICES, AS APPROPRIATE TO THE PATIENT.

5. CONSENT BY A PATIENT OR A SURROGATE FOR A PATIENT IN A MENTAL HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF THIS CHAPTER.

S 2994-DD. MANAGING A NONHOSPITAL ORDER NOT TO RESUSCITATE. 1. THE ATTENDING PHYSICIAN SHALL RECORD THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCITATE IN THE PATIENT'S MEDICAL RECORD.

2. A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL BE ISSUED UPON A STANDARD FORM PRESCRIBED BY THE COMMISSIONER. THE COMMISSIONER SHALL ALSO DEVELOP A STANDARD BRACELET THAT MAY BE WORN BY A PATIENT WITH A NONHOSPITAL ORDER NOT TO RESUSCITATE TO IDENTIFY THAT STATUS; PROVIDED, HOWEVER, THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AND THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AS A CONDITION FOR HONORING A NONHOSPITAL ORDER NOT TO RESUSCITATE OR FOR PROVIDING HEALTH CARE SERVICES.

3. AN ATTENDING PHYSICIAN WHO HAS ISSUED A NONHOSPITAL ORDER NOT TO RESUSCITATE, AND WHO TRANSFERS CARE OF THE PATIENT TO ANOTHER PHYSICIAN, SHALL INFORM THE PHYSICIAN OF THE ORDER.

4. FOR EACH PATIENT FOR WHOM A NONHOSPITAL ORDER NOT TO RESUSCITATE HAS BEEN ISSUED, THE ATTENDING PHYSICIAN SHALL REVIEW WHETHER THE ORDER IS STILL APPROPRIATE IN LIGHT OF THE PATIENT'S CONDITION EACH TIME HE OR SHE EXAMINES THE PATIENT, WHETHER IN THE HOSPITAL OR ELSEWHERE, BUT AT LEAST EVERY NINETY DAYS, PROVIDED THAT THE REVIEW NEED NOT OCCUR MORE THAN ONCE EVERY SEVEN DAYS. THE ATTENDING PHYSICIAN SHALL RECORD THE REVIEW IN THE PATIENT'S MEDICAL RECORD PROVIDED, HOWEVER, THAT A REGISTERED NURSE WHO PROVIDES DIRECT CARE TO THE PATIENT MAY RECORD THE REVIEW IN THE MEDICAL RECORD AT THE DIRECTION OF THE PHYSICIAN. IN SUCH CASE, THE ATTENDING PHYSICIAN SHALL INCLUDE A CONFIRMATION OF THE REVIEW IN THE PATIENT'S MEDICAL RECORD WITHIN FOURTEEN DAYS OF SUCH REVIEW. FAILURE TO COMPLY WITH THIS SUBDIVISION SHALL NOT RENDER A NONHOSPITAL ORDER NOT TO RESUSCITATE INEFFECTIVE.

5. A PERSON WHO HAS CONSENTED TO A NONHOSPITAL ORDER NOT TO RESUSCITATE MAY AT ANY TIME REVOKE HIS OR HER CONSENT TO THE ORDER BY ANY ACT EVIDENCING A SPECIFIC INTENT TO REVOKE SUCH CONSENT. ANY HEALTH CARE PROFESSIONAL INFORMED OF A REVOCATION OF CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL NOTIFY THE ATTENDING PHYSICIAN OF THE REVOCATION. AN ATTENDING PHYSICIAN WHO IS INFORMED THAT A NONHOSPITAL ORDER NOT TO RESUSCITATE HAS BEEN REVOKED SHALL RECORD THE REVOCATION IN THE PATIENT'S MEDICAL RECORD, CANCEL THE ORDER AND MAKE DILIGENT EFFORTS TO RETRIEVE THE FORM ISSUING THE ORDER, AND THE STANDARD BRACELET, IF ANY.

S 2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCITATE. EMERGENCY MEDICAL SERVICES PERSONNEL OR HOSPITAL EMERGENCY SERVICES PERSONNEL WHO ARE PROVIDED WITH A NONHOSPITAL ORDER NOT TO RESUSCITATE, OR WHO IDENTIFY THE STANDARD BRACELET ON THE PATIENT'S BODY, SHALL COMPLY WITH THE TERMS OF SUCH ORDER; PROVIDED, HOWEVER, THAT:

1. EMERGENCY MEDICAL SERVICES PERSONNEL OR HOSPITAL EMERGENCY SERVICES PERSONNEL MAY DISREGARD THE ORDER IF:

(A) THEY BELIEVE IN GOOD FAITH THAT CONSENT TO THE ORDER HAS BEEN REVOKED, OR THAT THE ORDER HAS BEEN CANCELLED; OR

(B) FAMILY MEMBERS OR OTHERS ON THE SCENE, EXCLUDING SUCH PERSONNEL, OBJECT TO THE ORDER AND PHYSICAL CONFRONTATION APPEARS LIKELY; AND

2. HOSPITAL EMERGENCY SERVICES PHYSICIANS MAY DIRECT THAT THE ORDER BE DISREGARDED IF OTHER SIGNIFICANT AND EXCEPTIONAL MEDICAL CIRCUMSTANCES WARRANT DISREGARDING THE ORDER.

S 2994-FF. INTERINSTITUTIONAL TRANSFER. IF A PATIENT WITH A NONHOSPITAL ORDER NOT TO RESUSCITATE IS ADMITTED TO A HOSPITAL, THE ORDER SHALL BE TREATED AS AN ORDER NOT TO RESUSCITATE FOR A PATIENT TRANSFERRED FROM ANOTHER HOSPITAL, AND SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-CC OF THIS CHAPTER, EXCEPT THAT ANY SUCH ORDER FOR A PATIENT ADMITTED TO A MENTAL HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF THIS CHAPTER.

S 2994-GG. IMMUNITY. NO PERSON SHALL BE SUBJECTED TO CRIMINAL PROSECUTION OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH PURSUANT TO THIS SECTION A NONHOSPITAL ORDER NOT TO RESUSCITATE, FOR DISREGARDING A NONHOSPITAL ORDER PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-EE OF THIS ARTICLE, OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH PURSUANT TO THIS SECTION.

S 3. The article heading of article 29-B of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

ORDERS NOT TO RESUSCITATE FOR RESIDENTS OF MENTAL HYGIENE FACILITIES

S 4. Subdivisions 7, 10, 13 and 16 of section 2961 of the public health law are REPEALED.

S 5. Subdivisions 2, 4, 5, 9 and 19 of section 2961 of the public health law, subdivisions 2 and 19 as amended and subdivision 9 as renumbered by chapter 370 of the laws of 1991 and subdivisions 4, 5 and 9 as added by chapter 818 of the laws of 1987, are amended to read as follows:

2. "Attending physician" means the physician selected by or assigned to a patient in a hospital [or, for the purpose of provisions herein governing nonhospital orders not to resuscitate, a patient not in a hospital,] who has primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such physician may act as the attending physician pursuant to this article.

4. "Cardiopulmonary resuscitation" means measures[, as specified in regulations promulgated by the commissioner,] to restore cardiac function or to support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac functions in the absence of an arrest.

5. "Close RELATIVE OR CLOSE friend" means any person, eighteen years of age or older, who [presents an affidavit to an attending physician stating that he] is a [close] RELATIVE OR friend of the patient, REGARDLESS OF BLOOD OR LEGAL RELATIONSHIP, and [that he] WHO has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious or moral beliefs [and stating the facts and circumstances that demonstrate such familiarity].

9. "Hospital" means [a general hospital as defined in subdivision ten of section twenty-eight hundred one of this chapter and a residential health care facility as defined in subdivision three of section twenty-

eight hundred one of this chapter or] a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law or a school named in section 13.17 of the mental hygiene law.

19. "Patient" means a person admitted to a hospital [or, for the purpose of provisions herein governing nonhospital orders not to resuscitate, a person who has or may be issued a nonhospital order not to resuscitate].

S 6. Section 2961 of the public health law is amended by adding a new subdivision 6-a to read as follows:

6-A. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER PERSON:

(A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATIONSHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN JURISDICTION; OR

(B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

(C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO: COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON; SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP OF THE PERSONS.

EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMESTIC PARTNER" ALSO SHALL NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

S 7. Subdivision 1, paragraph (b) of subdivision 3 and subdivision 4 of section 2963 of the public health law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987 and paragraph (b) of subdivision 3 as amended by chapter 23 of the laws of 1994, are amended to read as follows:

1. Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise pursuant to this section or pursuant to a court order[. A lack of capacity shall not be presumed from the fact that a committee of the property or conservator has been appointed for the adult pursuant to article seventy-seven or seventy-eight of the mental hygiene law, or that a guardian has been appointed pursuant to article seventeen-A of the surrogate's court procedure act] OR UNLESS A GUARDIAN IS AUTHORIZED TO DECIDE ABOUT HEALTH CARE FOR THE ADULT PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW. FOR PURPOSES OF THIS ARTICLE, THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT SHALL NOT CREATE ANY PRESUMPTION REGARDING THE PATIENT'S DECISION-MAKING CAPACITY. THE ATTENDING PHYSICIAN SHALL NOT RELY ON THE PRESUMPTION STATED IN THIS SUBDIVISION IF CLINICAL INDICIA OF INCAPACITY ARE PRESENT.

(b) If the attending physician [of a patient in a general hospital] determines that a patient lacks capacity because of mental illness, the concurring determination required by paragraph (a) of this subdivision shall be provided by a physician licensed to practice medicine in New York state, who is a diplomate or eligible to be certified by the American Board of Psychiatry and Neurology or who is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that board.

4. Notice of a determination that the patient lacks capacity shall promptly be given (a) to the patient, where there is any indication of the patient's ability to comprehend such notice, together with a copy of a statement prepared in accordance with section twenty-nine hundred seventy-eight of this article, AND (b) to the person on the surrogate list highest in order of priority listed, when persons in prior subparagraphs are not reasonably available[, and (c) if the patient is in or is transferred from a mental hygiene facility, to the facility director]. Nothing in this subdivision shall preclude or require notice to more than one person on the surrogate list.

S 8. Subdivisions 3 and 4 of section 2964 of the public health law are REPEALED.

S 9. Paragraph (a) of subdivision 2 of section 2965 of the public health law, as added by chapter 818 of the laws of 1987 and subparagraphs (i), (ii), (iii), (iv), (v) and (vi) as redesignated and such subdivision as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

(a) One person from the following list, to be chosen in order of priority listed, when persons in the prior [subparagaphs] SUBPARAGRAPHS are not reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate, shall have the authority to act as surrogate on behalf of the patient:

(i) a [committee of the person or] GUARDIAN AUTHORIZED TO DECIDE ABOUT HEALTH CARE PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW OR a guardian OF A PERSON appointed [pursuant to] UNDER article seventeen-A of the surrogate's court procedure act, provided that this paragraph shall not be construed to require the appointment of a [committee of the person or] guardian for the purpose of making the resuscitation decision;

(ii) the spouse, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE DOMESTIC PARTNER;

(iii) a son or daughter eighteen years of age or older;

(iv) a parent;

(v) a brother or sister eighteen years of age or older; and

(vi) a close RELATIVE OR CLOSE friend.

S 10. Paragraph (c) of subdivision 4 and subdivision 5 of section 2965 of the public health law are REPEALED.

S 11. Paragraph (d) of subdivision 4 of section 2965 of the public health law, as added by chapter 818 of the laws of 1987 and such subdivision as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

[(d)] (C) If the attending physician has actual notice of opposition to a surrogate's consent to an order not to resuscitate by any person on the surrogate list[, or, if the patient is in or is transferred from a mental hygiene facility, by the facility director], the [phsyician] PHYSICIAN shall submit the matter to the dispute mediation system and such order shall not be issued or shall be revoked in accordance with

the provisions of subdivision three of section twenty-nine hundred seventy-two of this article.

S 12. Subdivision 2 of section 2966 of the public health law is REPEALED.

S 13. Paragraph (c) of subdivision 2 of section 2967 of the public health law is REPEALED.

S 14. Subdivision 1 of section 2970 of the public health law, as amended by chapter 370 of the laws of 1991, is amended to read as follows:

1. For each patient for whom an order not to resuscitate has been issued, the attending physician shall review the patient's chart to determine if the order is still appropriate in light of the patient's condition and shall indicate on the patient's chart that the order has been reviewed[:

(a) for a patient, excluding outpatients described in paragraph (b) of this subdivision and alternate level of care patients, in a hospital, other than a residential health care facility, at least every seven days;

(b) for an outpatient whose order not to resuscitate is effective while the patient receives care in a hospital, each time the attending physician examines the patient, whether in the hospital or elsewhere, provided that the review need not occur more than once every seven days; and

(c) for a patient in a residential health care facility or an alternate level of care patient in a hospital,] each time the patient is required to be seen by a physician but at least every sixty days.

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

S 15. Section 2971 of the public health law is amended by adding a new subdivision 3 to read as follows:

3. FOR PURPOSES OF THIS SECTION, AN ORDER NOT TO RESUSCITATE ISSUED BY A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, OR BY A RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, SHALL BE DEEMED A HOSPITAL ORDER NOT TO RESUSCITATE.

S 16. Subdivision 2 of section 2972 of the public health law, as amended by chapter 370 of the laws of 1991, is amended to read as follows:

2. The dispute mediation system shall be authorized to mediate any dispute, including disputes regarding the determination of the patient's capacity, arising under this article between the patient and an attending physician or the hospital that is caring for the patient and, if the patient is a minor, the patient's parent, or among an attending physician, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, AND the hospital that is caring for the patient [and, where the dispute involves a patient who is in or is transferred from a mental hygiene facility, the facility director].

S 17. Subdivision 1 of section 2973 of the public health law, as amended by chapter 577 of the laws of 1993, is amended to read as follows:

1. The patient, an attending physician, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and[, in disputes involving a patient who is in or is transferred from a mental hygiene or correctional facility,] the facility director, may commence a special

proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, with respect to any dispute arising under this article, except that the decision of a patient not to consent to issuance of an order not to resuscitate may not be subjected to judicial review. In any proceeding brought pursuant to this subdivision challenging a decision regarding issuance of an order not to resuscitate on the ground that the decision is contrary to the patient's wishes or best interests, the person or entity challenging the decision must show, by clear and convincing evidence, that the decision is contrary to the patient's wishes including consideration of the patient's religious and moral beliefs, or, in the absence of evidence of the patient's wishes, that the decision is contrary to the patient's best interests. In any other proceeding brought pursuant to this subdivision, the court shall make its determination based upon the applicable substantive standards and procedures set forth in this article.

S 18. Section 2977 of the public health law is REPEALED.

S 19. Subdivision 1 of section 2978 of the public health law is REPEALED and subdivision 2, as added by chapter 818 of the laws of 1987, such section as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

[2.] The commissioners of mental health and mental retardation and developmental disabilities[, in consultation with the commissioner of health,] shall establish such regulations as may be necessary for implementation of this article with respect to those persons in mental hygiene facilities.

S 20. The opening paragraph of subdivision 1 of section 2979 of the public health law, as added by chapter 818 of the laws of 1987, such section as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

The [commissioner of health, after consultation with the] commissioners of mental health and mental retardation and developmental disabilities[,] shall prepare a statement summarizing the rights, duties, and requirements of this article and shall require that a copy of such statement:

S 21. Subdivisions 3 and 4 of section 2984 of the public health law, as added by chapter 752 of the laws of 1990, are amended and a new subdivision 5 is added to read as follows:

3. Notwithstanding subdivision two of this section, nothing in this article shall be construed to require a private hospital to honor an agent's health care decision that the hospital would not honor if the decision had been made by the principal because the decision is contrary to a formally adopted policy of the hospital that is expressly based on religious beliefs or sincerely held moral convictions central to the facility's operating principles and the hospital would be permitted by law to refuse to honor the decision if made by the principal, provided:

(a) the hospital has informed the patient or the health care agent of such policy prior to or upon admission, if reasonably possible; and

(b) the patient is transferred promptly to another hospital that is reasonably accessible under the circumstances and is willing to honor the agent's decision AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH SUBDIVISION FIVE OF THIS SECTION. If the agent is unable or unwilling to arrange such a transfer, the hospital may intervene to facilitate such a transfer. If such a transfer is not effected, the hospital shall seek judicial relief IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-TWO OF THIS ARTICLE or honor the agent's decision.

4. Notwithstanding subdivision two of this section, nothing in this article shall be construed to require an individual as a health care provider to honor an agent's health care decision that the individual would not honor if the decision had been made by the principal because the decision is contrary to the individual's religious beliefs or sincerely held moral convictions, provided the individual health care provider promptly informs the health care agent and the hospital of his or her refusal to honor the agent's decision. In such event, the hospital shall promptly transfer responsibility for the patient to another individual health care provider willing to honor the agent's decision. The individual health care provider shall cooperate in facilitating such transfer of the patient AND COMPLY WITH SUBDIVISION FIVE OF THIS SECTION.

5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION TWO OF SECTION TWENTY-NINE HUNDRED EIGHTY-NINE OF THIS ARTICLE, IF AN AGENT DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL OF WHICH IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE DEATH OF THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT DOES NOT WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH THE AGENT'S DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A WILLING HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW.

S 22. Section 2980 of the public health law is amended by adding a new subdivision 9-a to read as follows:

9-A. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCEDURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME, AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF MEDICAL CERTAINTY.

S 23. This act shall take effect on the first of June next succeeding the year in which it shall have become a law.