

9647--A

I N A S S E M B L Y

May 14, 2014

Introduced by M. of A. CLARK, GOTTFRIED -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Subdivisions 4 and 10 of section 2980 of the public health
2 law, subdivision 4 as added by chapter 752 of the laws of 1990, subdivi-
3 sion 10 as amended by chapter 23 of the laws of 1994, are amended to
4 read as follows:
5 4. "Health care" means any treatment, service or procedure to diagnose
6 or treat an individual's physical or mental condition. PROVIDING NUTRI-
7 TION OR HYDRATION ORALLY, WITHOUT RELIANCE ON MEDICAL TREATMENT, IS NOT
8 HEALTH CARE UNDER THIS ARTICLE AND IS NOT SUBJECT TO THIS ARTICLE.
9 10. "Mental hygiene facility" means a residential facility, excluding
10 family care homes, operated or licensed by the office of mental health
11 or the office [of mental retardation and] FOR PEOPLE WITH developmental
12 disabilities.
13 S 2. Paragraph (b) of subdivision 1 of section 2981 of the public
14 health law, as added by chapter 752 of the laws of 1990, is amended to
15 read as follows:
16 (b) For the purposes of this section, every adult shall be presumed
17 competent to appoint a health care agent unless such person has been
18 adjudged incompetent or otherwise adjudged not competent to appoint a
19 health care agent, or unless a [committee or] guardian of the person has
20 been appointed for the adult pursuant to article [seventy-eight] EIGHT-
21 Y-ONE of the mental hygiene law or article seventeen-A of the surro-
22 gate's court procedure act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 S 10. Paragraphs (a) and (b) of subdivision 3 of section 2994-e of the
37 public health law, as added by chapter 8 of the laws of 2010, are
38 amended to read as follows:

39 (a) If an attending physician determines that a patient is an emanci-
40 pated minor patient with decision-making capacity AND DOCUMENTS THE
41 BASIS FOR SUCH DETERMINATION IN THE PATIENT'S MEDICAL RECORD, the
42 patient shall have the authority to decide about life-sustaining treat-
43 ment. Such authority shall include a decision to withhold or withdraw
44 life-sustaining treatment if an attending physician and the ethics
45 review committee determine that the decision accords with the standards
46 for surrogate decisions for adults, and the ethics review committee
47 approves the decision.

48 (b) If the hospital can with reasonable efforts ascertain the identity
49 of the parents or guardian of an emancipated minor patient, the hospital
50 shall MAKE DILIGENT EFFORTS TO notify such persons, AND DOCUMENT SUCH
51 DILIGENT EFFORTS IN THE PATIENT'S MEDICAL RECORD, prior to withholding
52 or withdrawing life-sustaining treatment pursuant to this subdivision.

53 S 11. Subparagraph (iv) of paragraph (b) of subdivision 4 of section
54 2994-m of the public health law, as added by chapter 8 of the laws of
55 2010, is amended to read as follows:

(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 HOSPITAL MAKES DILIGENT EFFORTS TO INFORM the persons identified in subparagraph (iii) of this paragraph [have been informed] of the committee's response to the case AND DOCUMENTS SUCH DILIGENT EFFORTS IN THE PATIENT'S MEDICAL RECORD.

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

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

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

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

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

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

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

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

S 16. Subdivisions 2 and 6 of section 2994-dd of the public health law, subdivision 2 as added by chapter 8 of the laws of 2010 and subdi-

vision 6 as amended by section 10 of part J of chapter 56 of the laws of 2012, are amended to read as follows:

2. A nonhospital order not to resuscitate shall be issued upon a standard form prescribed by the commissioner. [The commissioner shall also develop a] A standard bracelet [that] OR OTHER ARTICLE 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 OR OTHER ARTICLE and that no person may require a patient to wear such a bracelet OR OTHER ARTICLE as a condition for honoring a nonhospital order not to resuscitate or for providing health care services.

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

S 17. Section 2994-gg of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

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] ARTICLE 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] ARTICLE.

S 18. This act shall take effect on the ninetieth day after it shall have become a law, provided that the amendments to article 29-C of the public health law shall apply to decisions made pursuant to health care proxies created prior to the effective date of this act as well as those created thereafter.