

6966

2015-2016 Regular Sessions

I N A S S E M B L Y

April 15, 2015

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

AN ACT to amend the public health law and the surrogate's court procedure act, in relation to restoring medical futility as a basis for both surrogate consent to a do not resuscitate order and for a do not resuscitate order for a patient without a surrogate

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

1 Section 1. Legislative findings. Under New York's former do not resus-
2 citate (hereinafter "DNR") law, article 29-B of the public health law, a
3 surrogate could consent to a DNR order if the patient met any one of
4 four clinical criteria, one of which was a finding by two physicians
5 that resuscitation was "medically futile," which was defined to mean
6 that resuscitation "will be unsuccessful in restoring cardiac and
7 respiratory function or that the patient will experience repeated arrest
8 in a short time period before death occurs." The former DNR law also
9 allowed a DNR order to be entered for a patient who did not have a
10 surrogate on that basis. That law applied to all patients, including
11 developmentally disabled patients.

12 In 2010, the former DNR law was superseded by the Family Health Care
13 Decisions Act (hereinafter "FHCD") which established standards for the
14 withdrawal or withholding of a broad range of life-sustaining treat-
15 ments. Accordingly, the FHCD did not have a standard specifically
16 relating to medically futile resuscitation. Similarly, Surrogate's Court
17 Procedure Act (hereinafter "SPCA") S1750-b does not have a standard
18 specifically relating to medically futile resuscitation for develop-
19 mentally disabled patients.

20 The legislature finds that the broader FHCD and SPCA S1750-b stand-
21 ards are difficult to apply to situations in which resuscitation would
22 be medically futile. Accordingly, this bill restores the former DNR

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

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1 law's medical futility standard as an alternative basis for writing a
2 DNR order under the FHCDA and under SCPA S1750-b.

3 S 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 5 of
4 section 2994-d of the public health law, as added by chapter 8 of the
5 laws of 2010, are amended and a new subparagraph (iii) is added to read
6 as follows:

7 (i) Treatment would be an extraordinary burden to the patient and an
8 attending physician determines, with the independent concurrence of
9 another physician, that, to a reasonable degree of medical certainty and
10 in accord with accepted medical standards, (A) the patient has an
11 illness or injury which can be expected to cause death within six
12 months, whether or not treatment is provided; or (B) the patient is
13 permanently unconscious; [or]

14 (ii) The provision of treatment would involve such pain, suffering or
15 other burden that it would reasonably be deemed inhumane or extraor-
16 dinarily burdensome under the circumstances and the patient has an irre-
17 versible or incurable condition, as determined by an attending physician
18 with the independent concurrence of another physician to a reasonable
19 degree of medical certainty and in accord with accepted medical stand-
20 ards[.]; OR

21 (III) WITH RESPECT TO A DECISION TO ENTER AN ORDER NOT TO RESUSCITATE,
22 AN ATTENDING PHYSICIAN DETERMINES, WITH THE INDEPENDENT CONCURRENCE OF A
23 SECOND PHYSICIAN, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, THAT IN
24 THE EVENT OF A CARDIAC OR RESPIRATORY ARREST, RESUSCITATION WOULD BE
25 UNSUCCESSFUL IN RESTORING CARDIAC AND RESPIRATORY FUNCTION OR THAT THE
26 PATIENT WILL EXPERIENCE REPEATED ARREST IN A SHORT TIME PERIOD BEFORE
27 DEATH OCCURS.

28 S 3. Paragraph (b) of subdivision 5 of section 2994-g of the public
29 health law, as added by chapter 8 of the laws of 2010, is amended to
30 read as follows:

31 (b) If the attending physician, with independent concurrence of a
32 second physician designated by the hospital, determines to a reasonable
33 degree of medical certainty that:

34 (i) (A) life-sustaining treatment offers the patient no medical bene-
35 fit because the patient will die imminently, even if the treatment is
36 provided; and

37 [(ii)] (B) the provision of life-sustaining treatment would violate
38 accepted medical standards, then such treatment may be withdrawn or
39 withheld from an adult patient who has been determined to lack deci-
40 sion-making capacity pursuant to section twenty-nine hundred ninety-
41 four-c of this article, without judicial approval. This paragraph shall
42 not apply to any treatment necessary to alleviate pain or discomfort; OR

43 (II) IN THE EVENT OF CARDIAC OR RESPIRATORY ARREST, RESUSCITATION WILL
44 BE UNSUCCESSFUL IN RESTORING CARDIAC AND RESPIRATORY FUNCTION OR THAT
45 THE PATIENT WILL EXPERIENCE REPEATED ARREST IN A SHORT TIME PERIOD
46 BEFORE DEATH OCCURS, THEN AN ORDER NOT TO RESUSCITATE MAY BE ENTERED FOR
47 AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACI-
48 TY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTI-
49 CLE, WITHOUT JUDICIAL APPROVAL.

50 S 4. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 4 of
51 section 1750-b of the surrogate's court procedure act, as added by chap-
52 ter 500 of the laws of 2002, are amended to read as follows:

53 (i) the [mentally retarded person] PERSON WITH DEVELOPMENTAL DISABILI-
54 TIES has a medical condition as follows:

55 A. a terminal condition, [as defined in subdivision twenty-three of
56 section twenty-nine hundred sixty-one of the public health law] WHICH

1 SHALL MEAN AN ILLNESS OR INJURY FROM WHICH THERE IS NO RECOVERY, AND
2 WHICH CAN REASONABLY BE EXPECTED TO CAUSE DEATH WITHIN ONE YEAR; or

3 B. permanent unconsciousness; or

4 C. a medical condition other than such person's [mental retardation]
5 DEVELOPMENTAL DISABILITY which requires life-sustaining treatment, is
6 irreversible and which will continue indefinitely; [and] OR

7 D. IN THE CASE OF A DECISION TO ENTER AN ORDER NOT TO RESUSCITATE,
8 THAT IN THE EVENT OF CARDIAC OR RESPIRATORY ARREST SUCH RESUSCITATION
9 WOULD BE UNSUCCESSFUL IN RESTORING CARDIAC AND RESPIRATORY FUNCTION OR
10 THAT THE PATIENT WILL EXPERIENCE REPEATED ARREST IN A SHORT TIME PERIOD
11 BEFORE DEATH OCCURS; AND

12 (ii) EXCEPT IN THE CASE OF A DECISION TO ENTER AN ORDER NOT TO RESUS-
13 CITATE BASED ON CLAUSE D OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, the
14 life-sustaining treatment would impose an extraordinary burden on such
15 person, in light of:

16 A. such person's medical condition, other than such person's [mental
17 retardation] DEVELOPMENTAL DISABILITY; and

18 B. the expected outcome of the life-sustaining treatment, notwith-
19 standing such person's [mental retardation] DEVELOPMENTAL DISABILITY;
20 and

21 S 5. Subdivision 4 of section 1750-b of the surrogate's court proce-
22 dure act is amended by adding new paragraph (f) to read as follows:

23 (F) IN THE CASE OF A PERSON FOR WHOM "GUARDIAN" MEANS A SURROGATE
24 DECISION-MAKING COMMITTEE PURSUANT TO THIS SECTION, AN ORDER NOT TO
25 RESUSCITATE MAY BE ENTERED, WITHOUT REVIEW OR APPROVAL BY SUCH COMMIT-
26 TEE, IF THE ATTENDING PHYSICIAN DETERMINES, WITH THE INDEPENDENT CONCUR-
27 RENCE OF A SECOND PHYSICIAN, TO A REASONABLE DEGREE OF MEDICAL CERTAIN-
28 TY, THAT IN THE EVENT OF A CARDIAC OR RESPIRATORY ARREST RESUSCITATION
29 WOULD BE UNSUCCESSFUL IN RESTORING CARDIAC AND RESPIRATORY FUNCTION OR
30 THAT THE PATIENT WILL EXPERIENCE REPEATED ARREST IN A SHORT TIME PERIOD
31 BEFORE DEATH OCCURS.

32 S 6. This act shall take effect on the ninetieth day after it shall
33 have become a law.