

# STATE OF NEW YORK

10476--A

## IN ASSEMBLY

April 27, 2018

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

AN ACT to amend the public health law, in relation to execution of orders not to resuscitate and orders pertaining to life sustaining treatments; 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:

1 Section 1. Section 2960 of the public health law, as amended by chap-  
2 ter 430 of the laws of 2017, is amended to read as follows:

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

13 § 2. Subdivisions 2, 5 and 20 of section 2961 of the public health  
14 law, as amended by chapter 430 of the laws of 2017, are amended to read  
15 as follows:

16 2. "Attending [~~physician~~] practitioner" means the physician, nurse  
17 practitioner, or physician assistant, licensed or certified pursuant to  
18 title eight of the education law, selected by or assigned to a patient  
19 in a hospital who has primary responsibility for the treatment and care  
20 of the patient. Where more than one physician [~~and/or~~], nurse practi-  
21 tioner, or physician assistant shares such responsibility, any such  
22 physician [~~or~~], nurse practitioner, or physician assistant may act as  
23 the attending [~~physician or attending nurse~~] practitioner pursuant to  
24 this article.

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

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1 5. "Close friend" means any person, eighteen years of age or older,  
2 who is a close friend of the patient, or relative of the patient (other  
3 than a spouse, adult child, parent, brother or sister) who has main-  
4 tained such regular contact with the patient as to be familiar with the  
5 patient's activities, health, and religious or moral beliefs and who  
6 presents a signed statement to that effect to the attending [~~physician~~  
7 ~~or attending nurse~~] practitioner.

8 20. "Reasonably available" means that a person to be contacted can be  
9 contacted with diligent efforts by an attending [~~physician, attending~~  
10 ~~nurse~~] practitioner or another person acting on behalf of the attending  
11 [~~physician, attending nurse~~] practitioner or the hospital.

12 § 3. Subdivision 2-a of section 2961 of the public health law is  
13 REPEALED.

14 § 4. Subdivisions 2 and 3 of section 2962 of the public health law, as  
15 amended by chapter 430 of the laws of 2017, are amended to read as  
16 follows:

17 2. It shall be lawful for the attending [~~physician or attending nurse~~]  
18 practitioner to issue an order not to resuscitate a patient, provided  
19 that the order has been issued pursuant to the requirements of this  
20 article. The order shall be included in writing in the patient's chart.  
21 An order not to resuscitate shall be effective upon issuance.

22 3. Before obtaining, pursuant to this article, the consent of the  
23 patient, or of the surrogate of the patient, or parent or legal guardian  
24 of the minor patient, to an order not to resuscitate, the attending  
25 [~~physician or attending nurse~~] practitioner shall provide to the person  
26 giving consent information about the patient's diagnosis and prognosis,  
27 the reasonably foreseeable risks and benefits of cardiopulmonary resus-  
28 citation for the patient, and the consequences of an order not to resus-  
29 citate.

30 § 5. Section 2963 of the public health law, as amended by chapter 430  
31 of the laws of 2017, is amended to read as follows:

32 § 2963. Determination of capacity to make a decision regarding  
33 cardiopulmonary resuscitation. 1. Every adult shall be presumed to have  
34 the capacity to make a decision regarding cardiopulmonary resuscitation  
35 unless determined otherwise pursuant to this section or pursuant to a  
36 court order or unless a guardian is authorized to decide about health  
37 care for the adult pursuant to article eighty-one of the mental hygiene  
38 law or article seventeen-A of the surrogate's court procedure act. The  
39 attending [~~physician or attending nurse~~] practitioner shall not rely on  
40 the presumption stated in this subdivision if clinical indicia of inca-  
41 pacity are present.

42 2. A determination that an adult patient lacks capacity shall be made  
43 by the attending [~~physician or attending nurse~~] practitioner to a  
44 reasonable degree of medical certainty. The determination shall be made  
45 in writing and shall contain such attending [~~physician's or attending~~  
46 ~~nurse~~] practitioner's opinion regarding the cause and nature of the  
47 patient's incapacity as well as its extent and probable duration. The  
48 determination shall be included in the patient's medical chart.

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

1 (b) If the attending [~~physician or attending nurse~~] practitioner  
2 determines that a patient lacks capacity because of mental illness, the  
3 concurring determination required by paragraph (a) of this subdivision  
4 shall be provided by a physician licensed to practice medicine in New  
5 York state, who is a diplomate or eligible to be certified by the Ameri-  
6 can Board of Psychiatry and Neurology or who is certified by the Ameri-  
7 can Osteopathic Board of Neurology and Psychiatry or is eligible to be  
8 certified by that board.

9 (c) If the attending [~~physician or attending nurse~~] practitioner  
10 determines that a patient lacks capacity because of a developmental  
11 disability, the concurring determination required by paragraph (a) of  
12 this subdivision shall be provided by a physician or psychologist  
13 employed by a developmental disabilities services office named in  
14 section 13.17 of the mental hygiene law, or who has been employed for a  
15 minimum of two years to render care and service in a facility operated  
16 or licensed by the office for people with developmental disabilities, or  
17 who has been approved by the commissioner of developmental disabilities  
18 in accordance with regulations promulgated by such commissioner. Such  
19 regulations shall require that a physician or psychologist possess  
20 specialized training or three years experience in treating developmental  
21 disabilities.

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

31 5. A determination that a patient lacks capacity to make a decision  
32 regarding an order not to resuscitate pursuant to this section shall not  
33 be construed as a finding that the patient lacks capacity for any other  
34 purpose.

35 § 6. Subdivision 2 of section 2964 of the public health law, as  
36 amended by chapter 430 of the laws of 2017, is amended to read as  
37 follows:

38 2. (a) During hospitalization, an adult with capacity may express a  
39 decision consenting to an order not to resuscitate orally in the pres-  
40 ence of at least two witnesses eighteen years of age or older, one of  
41 whom is a physician [~~or~~], nurse practitioner, or physician assistant  
42 affiliated with the hospital in which the patient is being treated. Any  
43 such decision shall be recorded in the patient's medical chart.

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

48 (c) An attending [~~physician or attending nurse~~] practitioner who is  
49 provided with or informed of a decision pursuant to this subdivision  
50 shall record or include the decision in the patient's medical chart if  
51 the decision has not been recorded or included, and either:

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

1 (ii) promptly make his or her objection to the issuance of such an  
2 order and the reasons therefor known to the patient and either make all  
3 reasonable efforts to arrange for the transfer of the patient to another  
4 physician ~~[or]~~, nurse practitioner or physician assistant, if necessary,  
5 or promptly submit the matter to the dispute mediation system.

6 (d) Prior to issuing an order not to resuscitate a patient who has  
7 expressed a decision consenting to an order not to resuscitate under  
8 specified medical conditions, the attending [~~physician or attending~~  
9 ~~nurse~~] practitioner must make a determination, to a reasonable degree of  
10 medical certainty, that such conditions exist, and include the determi-  
11 nation in the patient's medical chart.

12 § 7. Subdivisions 3 and 4 of section 2965 of the public health law, as  
13 amended by chapter 430 of the laws of 2017, are amended to read as  
14 follows:

15 3. (a) The surrogate shall make a decision regarding cardiopulmonary  
16 resuscitation on the basis of the adult patient's wishes including a  
17 consideration of the patient's religious and moral beliefs, or, if the  
18 patient's wishes are unknown and cannot be ascertained, on the basis of  
19 the patient's best interests.

20 (b) Notwithstanding any law to the contrary, the surrogate shall have  
21 the same right as the patient to receive medical information and medical  
22 records.

23 (c) A surrogate may consent to an order not to resuscitate on behalf  
24 of an adult patient only if there has been a determination by an attend-  
25 ing [~~physician or attending nurse~~] practitioner with the concurrence of  
26 another physician ~~[or]~~, nurse practitioner or physician assistant  
27 selected by a person authorized by the hospital to make such selection,  
28 given after personal examination of the patient that, to a reasonable  
29 degree of medical certainty:

30 (i) the patient has a terminal condition; or  
31 (ii) the patient is permanently unconscious; or  
32 (iii) resuscitation would be medically futile; or  
33 (iv) resuscitation would impose an extraordinary burden on the patient  
34 in light of the patient's medical condition and the expected outcome of  
35 resuscitation for the patient.

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

37 4. (a) A surrogate shall express a decision consenting to an order not  
38 to resuscitate either (i) in writing, dated, and signed in the presence  
39 of one witness eighteen years of age or older who shall sign the deci-  
40 sion, or (ii) orally, to two persons eighteen years of age or older, one  
41 of whom is a physician ~~[or]~~, nurse practitioner or physician assistant  
42 affiliated with the hospital in which the patient is being treated. Any  
43 such decision shall be recorded in the patient's medical chart.

44 (b) The attending [~~physician or attending nurse~~] practitioner who is  
45 provided with the decision of a surrogate shall include the decision in  
46 the patient's medical chart and, if the surrogate has consented to the  
47 issuance of an order not to resuscitate, shall either:

48 (i) promptly issue an order not to resuscitate the patient and inform  
49 the hospital staff responsible for the patient's care of the order; or  
50 (ii) promptly make the attending [~~physician's or attending nurse~~]  
51 practitioner's objection to the issuance of such an order known to the  
52 surrogate and either make all reasonable efforts to arrange for the  
53 transfer of the patient to another physician ~~[or]~~, nurse practitioner or  
54 physician assistant, if necessary, or promptly refer the matter to the  
55 dispute mediation system.

1 (c) If the attending [~~physician or attending nurse~~] practitioner has  
2 actual notice of opposition to a surrogate's consent to an order not to  
3 resuscitate by any person on the surrogate list, the physician [~~or~~],  
4 nurse practitioner or physician assistant shall submit the matter to the  
5 dispute mediation system and such order shall not be issued or shall be  
6 revoked in accordance with the provisions of subdivision three of  
7 section twenty-nine hundred seventy-two of this article.

8 § 8. Section 2966 of the public health law, as amended by chapter 430  
9 of the laws of 2017, is amended to read as follows:

10 § 2966. Decision-making on behalf of an adult patient without capacity  
11 for whom no surrogate is available. 1. If no surrogate is reasonably  
12 available, willing to make a decision regarding issuance of an order not  
13 to resuscitate, and competent to make a decision regarding issuance of  
14 an order not to resuscitate on behalf of an adult patient who lacks  
15 capacity and who had not previously expressed a decision regarding  
16 cardiopulmonary resuscitation, an attending [~~physician or attending~~  
17 ~~nurse~~] practitioner (a) may issue an order not to resuscitate the  
18 patient, provided that the attending [~~physician or attending nurse~~]  
19 practitioner determines, in writing, that, to a reasonable degree of  
20 medical certainty, resuscitation would be medically futile, and another  
21 physician [~~or~~], nurse practitioner or physician assistant selected by a  
22 person authorized by the hospital to make such selection, after personal  
23 examination of the patient, reviews and concurs in writing with such  
24 determination, or, (b) shall issue an order not to resuscitate the  
25 patient, provided that, pursuant to subdivision one of section twenty-  
26 nine hundred seventy-six of this article, a court has granted a judgment  
27 directing the issuance of such an order.

28 2. Notwithstanding any other provision of this section, where a deci-  
29 sion to consent to an order not to resuscitate has been made, notice of  
30 the decision shall be given to the patient where there is any indication  
31 of the patient's ability to comprehend such notice. If the patient  
32 objects, an order not to resuscitate shall not be issued.

33 § 9. Section 2967 of the public health law, as amended by chapter 430  
34 of the laws of 2017, is amended to read as follows:

35 § 2967. Decision-making on behalf of a minor patient. 1. An attending  
36 [~~physician or attending nurse~~] practitioner, in consultation with a  
37 minor's parent or legal guardian, shall determine whether a minor has  
38 the capacity to make a decision regarding resuscitation.

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

42 (b) Where the attending [~~physician or attending nurse~~] practitioner  
43 has reason to believe that there is another parent or a non-custodial  
44 parent who has not been informed of a decision to issue an order not to  
45 resuscitate the minor, the attending [~~physician or attending nurse~~]  
46 practitioner, or someone acting on behalf of the [~~attending physician or~~  
47 ~~attending nurse~~] practitioner, shall make reasonable efforts to deter-  
48 mine if the uninformed parent or non-custodial parent has maintained  
49 substantial and continuous contact with the minor and, if so, shall make  
50 diligent efforts to notify that parent or non-custodial parent of the  
51 decision prior to issuing the order.

52 3. A parent or legal guardian may consent to an order not to resusci-  
53 tate on behalf of a minor only if there has been a written determination  
54 by the attending [~~physician or attending nurse~~] practitioner, with the  
55 written concurrence of another physician [~~or~~], nurse practitioner or  
56 physician assistant selected by a person authorized by the hospital to

1 make such selections given after personal examination of the patient,  
2 that, to a reasonable degree of medical certainty, the minor suffers  
3 from one of the medical conditions set forth in paragraph (c) of subdi-  
4 vision three of section twenty-nine hundred sixty-five of this article.  
5 Each determination shall be included in the patient's medical chart.

6 4. (a) A parent or legal guardian of a minor, in making a decision  
7 regarding cardiopulmonary resuscitation, shall consider the minor  
8 patient's wishes, including a consideration of the minor patient's reli-  
9 gious and moral beliefs, and shall express a decision consenting to  
10 issuance of an order not to resuscitate either (i) in writing, dated and  
11 signed in the presence of one witness eighteen years of age or older who  
12 shall sign the decision, or (ii) orally, to two persons eighteen years  
13 of age or older, one of whom is a physician ~~[or]~~, nurse practitioner or  
14 physician assistant affiliated with the hospital in which the patient is  
15 being treated. Any such decision shall be recorded in the patient's  
16 medical chart.

17 (b) The attending ~~[physician or attending nurse]~~ practitioner who is  
18 provided with the decision of a minor's parent or legal guardian,  
19 expressed pursuant to this subdivision, and of the minor if the minor  
20 has capacity, shall include such decision or decisions in the minor's  
21 medical chart and shall comply with the provisions of paragraph (b) of  
22 subdivision four of section twenty-nine hundred sixty-five of this arti-  
23 cle.

24 (c) If the attending ~~[physician or attending nurse]~~ practitioner has  
25 actual notice of the opposition of a parent or non-custodial parent to  
26 consent by another parent to an order not to resuscitate a minor, the  
27 physician ~~[or]~~, nurse practitioner or physician assistant shall submit  
28 the matter to the dispute mediation system and such order shall not be  
29 issued or shall be revoked in accordance with the provisions of subdivi-  
30 sion three of section twenty-nine hundred seventy-two of this article.

31 § 10. Section 2969 of the public health law, as amended by chapter 430  
32 of the laws of 2017, is amended to read as follows:

33 § 2969. Revocation of consent to order not to resuscitate. 1. A person  
34 may, at any time, revoke his or her consent to an order not to resusci-  
35 tate himself or herself by making either a written or an oral declara-  
36 tion to a physician or member of the nursing staff at the hospital where  
37 he or she is being treated, or by any other act evidencing a specific  
38 intent to revoke such consent.

39 2. Any surrogate, parent, or legal guardian may at any time revoke his  
40 or her consent to an order not to resuscitate a patient by (a) notifying  
41 a physician or member of the nursing staff of the revocation of consent  
42 in writing, dated and signed, or (b) orally notifying the attending  
43 ~~[physician or attending nurse]~~ practitioner in the presence of a witness  
44 eighteen years of age or older.

45 3. Any physician ~~[or]~~, nurse practitioner or physician assistant who  
46 is informed of or provided with a revocation of consent pursuant to this  
47 section shall immediately include the revocation in the patient's chart,  
48 cancel the order, and notify the hospital staff responsible for the  
49 patient's care of the revocation and cancellation. Any member of the  
50 nursing staff, other than a nurse practitioner or physician assistant,  
51 who is informed of or provided with a revocation of consent pursuant to  
52 this section shall immediately notify a physician ~~[or]~~, nurse practi-  
53 tioner or physician assistant of such revocation.

54 § 11. Section 2970 of the public health law, as amended by chapter 430  
55 of the laws of 2017, is amended to read as follows:

1 § 2970. Physician ~~[and]~~, nurse practitioner and physician assistant  
2 review of the order not to resuscitate. 1. For each patient for whom an  
3 order not to resuscitate has been issued, the attending ~~[physician or~~  
4 ~~attending nurse]~~ practitioner shall review the patient's chart to deter-  
5 mine if the order is still appropriate in light of the patient's condi-  
6 tion and shall indicate on the patient's chart that the order has been  
7 reviewed each time the patient is required to be seen by a physician but  
8 at least every sixty days.

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

11 2. (a) If the attending ~~[physician or attending nurse]~~ practitioner  
12 determines at any time that an order not to resuscitate is no longer  
13 appropriate because the patient's medical condition has improved, the  
14 physician ~~[or]~~, nurse practitioner or physician assistant shall imme-  
15 diately notify the person who consented to the order. Except as provided  
16 in paragraph (b) of this subdivision, if such person declines to revoke  
17 consent to the order, the physician ~~[or]~~, nurse practitioner or physi-  
18 cian assistant shall promptly (i) make reasonable efforts to arrange for  
19 the transfer of the patient to another physician or (ii) submit the  
20 matter to the dispute mediation system.

21 (b) If the order not to resuscitate was entered upon the consent of a  
22 surrogate, parent, or legal guardian and the attending ~~[physician or~~  
23 ~~attending nurse]~~ practitioner who issued the order, or, if unavailable,  
24 another attending ~~[physician or attending nurse]~~ practitioner at any  
25 time determines that the patient does not suffer from one of the medical  
26 conditions set forth in paragraph (c) of subdivision three of section  
27 twenty-nine hundred sixty-five of this article, the attending ~~[physician~~  
28 ~~or attending nurse]~~ practitioner shall immediately include such determi-  
29 nation in the patient's chart, cancel the order, and notify the person  
30 who consented to the order and all hospital staff responsible for the  
31 patient's care of the cancellation.

32 (c) If an order not to resuscitate was entered upon the consent of a  
33 surrogate and the patient at any time gains or regains capacity, the  
34 attending ~~[physician or attending nurse]~~ practitioner who issued the  
35 order, or, if unavailable, another attending ~~[physician or attending~~  
36 ~~nurse]~~ practitioner shall immediately cancel the order and notify the  
37 person who consented to the order and all hospital staff directly  
38 responsible for the patient's care of the cancellation.

39 § 12. The opening paragraph and subdivision 2 of section 2971 of the  
40 public health law, as amended by chapter 430 of the laws of 2017, are  
41 amended to read as follows:

42 If a patient for whom an order not to resuscitate has been issued is  
43 transferred from a hospital to a different hospital the order shall  
44 remain effective, unless revoked pursuant to this article, until the  
45 attending ~~[physician or attending nurse]~~ practitioner first examines the  
46 transferred patient, whereupon the attending ~~[physician or attending~~  
47 ~~nurse]~~ practitioner must either:

48 2. Cancel the order not to resuscitate, provided the attending ~~[physi-~~  
49 ~~cian or attending nurse]~~ practitioner immediately notifies the person  
50 who consented to the order and the hospital staff directly responsible  
51 for the patient's care of the cancellation. Such cancellation does not  
52 preclude the entry of a new order pursuant to this article.

53 § 13. Subdivisions 1, 2 and 4 of section 2972 of the public health  
54 law, as amended by chapter 430 of the laws of 2017, are amended to read  
55 as follows:

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

4 (b) The dispute mediation system shall be described in writing and  
5 adopted by the hospital's governing authority. It may utilize existing  
6 hospital resources, such as a patient advocate's office or hospital  
7 chaplain's office, or it may utilize a body created specifically for  
8 this purpose, but, in the event a dispute involves a patient deemed to  
9 lack capacity pursuant to (i) paragraph (b) of subdivision three of  
10 section twenty-nine hundred sixty-three of this article, the system must  
11 include a physician ~~[or]~~, nurse practitioner or physician assistant  
12 eligible to provide a concurring determination pursuant to such subdivi-  
13 sion, or a family member or guardian of the person of a person with a  
14 mental illness of the same or similar nature, or (ii) paragraph (c) of  
15 subdivision three of section twenty-nine hundred sixty-three of this  
16 article, the system must include a physician ~~[or]~~, nurse practitioner or  
17 physician assistant eligible to provide a concurring determination  
18 pursuant to such subdivision, or a family member or guardian of the  
19 person of a person with a developmental disability of the same or simi-  
20 lar nature.

21 2. The dispute mediation system shall be authorized to mediate any  
22 dispute, including disputes regarding the determination of the patient's  
23 capacity, arising under this article between the patient and an attend-  
24 ing ~~[physician, attending nurse]~~ practitioner or the hospital that is  
25 caring for the patient and, if the patient is a minor, the patient's  
26 parent, or among an attending ~~[physician, an attending nurse]~~ practi-  
27 tioner, a parent, non-custodial parent, or legal guardian of a minor  
28 patient, any person on the surrogate list, and the hospital that is  
29 caring for the patient.

30 4. If a dispute between a patient who expressed a decision rejecting  
31 cardiopulmonary resuscitation and an attending ~~[physician, attending~~  
32 ~~nurse]~~ practitioner or the hospital that is caring for the patient is  
33 submitted to the dispute mediation system, and either:

34 (a) the dispute mediation system has concluded its efforts to resolve  
35 the dispute, or

36 (b) seventy-two hours have elapsed from the time of submission without  
37 resolution of the dispute, whichever shall occur first, the attending  
38 ~~[physician or attending nurse]~~ practitioner shall either: (i) promptly  
39 issue an order not to resuscitate the patient or issue the order at such  
40 time as the conditions, if any, specified in the decision are met, and  
41 inform the hospital staff responsible for the patient's care of the  
42 order; or (ii) promptly arrange for the transfer of the patient to  
43 another physician, nurse practitioner, physician assistant or hospital.

44 § 14. Subdivision 1 of section 2973 of the public health law, as  
45 amended by chapter 430 of the laws of 2017, is amended to read as  
46 follows:

47 1. The patient, an attending ~~[physician, attending nurse]~~ practition-  
48 er, a parent, non-custodial parent, or legal guardian of a minor  
49 patient, any person on the surrogate list, the hospital that is caring  
50 for the patient and the facility director, may commence a special  
51 proceeding pursuant to article four of the civil practice law and rules,  
52 in a court of competent jurisdiction, with respect to any dispute aris-  
53 ing under this article, except that the decision of a patient not to  
54 consent to issuance of an order not to resuscitate may not be subjected  
55 to judicial review. In any proceeding brought pursuant to this subdivi-  
56 sion challenging a decision regarding issuance of an order not to resus-

1 cite on the ground that the decision is contrary to the patient's  
2 wishes or best interests, the person or entity challenging the decision  
3 must show, by clear and convincing evidence, that the decision is  
4 contrary to the patient's wishes including consideration of the  
5 patient's religious and moral beliefs, or, in the absence of evidence of  
6 the patient's wishes, that the decision is contrary to the patient's  
7 best interests. In any other proceeding brought pursuant to this subdivi-  
8 sion, the court shall make its determination based upon the applicable  
9 substantive standards and procedures set forth in this article.

10 § 15. Section 2976 of the public health law, as amended by chapter 430  
11 of the laws of 2017, is amended to read as follows:

12 § 2976. Judicially approved order not to resuscitate. 1. If no surro-  
13 gate is reasonably available, willing to make a decision regarding issu-  
14 ance of an order not to resuscitate, and competent to make a decision  
15 regarding issuance of an order not to resuscitate on behalf of an adult  
16 patient who lacks capacity and who had not previously expressed a deci-  
17 sion regarding cardiopulmonary resuscitation pursuant to this article,  
18 an attending [~~physician or attending nurse~~] practitioner or hospital may  
19 commence a special proceeding pursuant to article four of the civil  
20 practice law and rules, in a court of competent jurisdiction, for a  
21 judgment directing the physician [~~or~~], nurse practitioner or physician  
22 assistant to issue an order not to resuscitate where the patient has a  
23 terminal condition, is permanently unconscious, or resuscitation would  
24 impose an extraordinary burden on the patient in light of the patient's  
25 medical condition and the expected outcome of resuscitation for the  
26 patient, and issuance of an order not to resuscitate is consistent with  
27 the patient's wishes including a consideration of the patient's reli-  
28 gious and moral beliefs or, in the absence of evidence of the patient's  
29 wishes, the patient's best interests.

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

34 § 16. Subdivisions 2 and 4 of section 2994-a of the public health law,  
35 as amended by chapter 430 of the laws of 2017, are amended to read as  
36 follows:

37 2. "Attending physician" means a physician, selected by or assigned to  
38 a patient pursuant to hospital policy, who has primary responsibility  
39 for the treatment and care of the patient. Where more than one physician  
40 [~~and/or~~], nurse practitioner or physician assistant shares such respon-  
41 sibility, or where a physician [~~or~~], nurse practitioner or physician  
42 assistant is acting on the attending [~~physician's or attending nurse~~]  
43 practitioner's behalf, any such physician [~~or~~], nurse practitioner or  
44 physician assistant may act as an attending [~~physician or attending~~  
45 ~~nurse~~] practitioner pursuant to this article.

46 4. "Close friend" means any person, eighteen years of age or older,  
47 who is a close friend of the patient, or a relative of the patient  
48 (other than a spouse, adult child, parent, brother or sister), who has  
49 maintained such regular contact with the patient as to be familiar with  
50 the patient's activities, health, and religious or moral beliefs, and  
51 who presents a signed statement to that effect to the attending [~~physi-  
52 cian or attending nurse~~] practitioner.

53 § 17. Subdivisions 2 and 3 of section 2994-b of the public health law,  
54 as amended by chapter 430 of the laws of 2017, are amended to read as  
55 follows:

1 2. Prior to seeking or relying upon a health care decision by a surro-  
2 gate for a patient under this article, the attending [~~physician or~~  
3 ~~attending nurse~~] practitioner shall make reasonable efforts to determine  
4 whether the patient has a health care agent appointed pursuant to arti-  
5 cle twenty-nine-C of this chapter. If so, health care decisions for the  
6 patient shall be governed by such article, and shall have priority over  
7 decisions by any other person except the patient or as otherwise  
8 provided in the health care proxy.

9 3. Prior to seeking or relying upon a health care decision by a surro-  
10 gate for a patient under this article, if the attending [~~physician or~~  
11 ~~attending nurse~~] practitioner has reason to believe that the patient has  
12 a history of receiving services for mental retardation or a develop-  
13 mental disability; it reasonably appears to the attending [~~physician or~~  
14 ~~attending nurse~~] practitioner that the patient has mental retardation or  
15 a developmental disability; or the [~~attending physician or attending~~  
16 ~~nurse~~] practitioner has reason to believe that the patient has been  
17 transferred from a mental hygiene facility operated or licensed by the  
18 office of mental health, then such physician [~~or~~], nurse practitioner or  
19 physician assistant shall make reasonable efforts to determine whether  
20 paragraphs (a), (b) or (c) of this subdivision are applicable:

21 (a) If the patient has a guardian appointed by a court pursuant to  
22 article seventeen-A of the surrogate's court procedure act, health care  
23 decisions for the patient shall be governed by section seventeen hundred  
24 fifty-b of the surrogate's court procedure act and not by this article.

25 (b) If a patient does not have a guardian appointed by a court pursu-  
26 ant to article seventeen-A of the surrogate's court procedure act but  
27 falls within the class of persons described in paragraph (a) of subdivi-  
28 sion one of section seventeen hundred fifty-b of such act, decisions to  
29 withdraw or withhold life-sustaining treatment for the patient shall be  
30 governed by section seventeen hundred fifty-b of the surrogate's court  
31 procedure act and not by this article.

32 (c) If a health care decision for a patient cannot be made under para-  
33 graphs (a) or (b) of this subdivision, but consent for the decision may  
34 be provided pursuant to the mental hygiene law or regulations of the  
35 office of mental health or the office for people with developmental  
36 disabilities, then the decision shall be governed by such statute or  
37 regulations and not by this article.

38 § 18. Subdivisions 2, 3 and 7 of section 2994-c of the public health  
39 law, as amended by chapter 430 of the laws of 2017, are amended to read  
40 as follows:

41 2. Initial determination by attending [~~physician or attending nurse~~]  
42 practitioner. An attending [~~physician or attending nurse~~] practitioner  
43 shall make an initial determination that an adult patient lacks deci-  
44 sion-making capacity to a reasonable degree of medical certainty. Such  
45 determination shall include an assessment of the cause and extent of the  
46 patient's incapacity and the likelihood that the patient will regain  
47 decision-making capacity.

48 3. Concurring determinations. (a) An initial determination that a  
49 patient lacks decision-making capacity shall be subject to a concurring  
50 determination, independently made, where required by this subdivision. A  
51 concurring determination shall include an assessment of the cause and  
52 extent of the patient's incapacity and the likelihood that the patient  
53 will regain decision-making capacity, and shall be included in the  
54 patient's medical record. Hospitals shall adopt written policies identi-  
55 fying the training and credentials of health or social services practi-  
56 tioners qualified to provide concurring determinations of incapacity.

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

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

10 (iii) With respect to decisions regarding hospice care for a patient  
11 in a general hospital or residential health care facility, the health or  
12 social services practitioner must be employed by or otherwise formally  
13 affiliated with the general hospital or residential health care facili-  
14 ty.

15 (c) (i) If the attending [~~physician or attending nurse~~] practitioner  
16 makes an initial determination that a patient lacks decision-making  
17 capacity because of mental illness, either such physician must have the  
18 following qualifications, or another physician with the following quali-  
19 fications must independently determine whether the patient lacks deci-  
20 sion-making capacity: a physician licensed to practice medicine in New  
21 York state, who is a diplomate or eligible to be certified by the Ameri-  
22 can Board of Psychiatry and Neurology or who is certified by the Ameri-  
23 can Osteopathic Board of Neurology and Psychiatry or is eligible to be  
24 certified by that board. A record of such consultation shall be included  
25 in the patient's medical record.

26 (ii) If the attending [~~physician or attending nurse~~] practitioner  
27 makes an initial determination that a patient lacks decision-making  
28 capacity because of a developmental disability, either such physician  
29 [~~or~~], nurse practitioner or physician assistant must have the following  
30 qualifications, or another professional with the following qualifica-  
31 tions must independently determine whether the patient lacks decision-  
32 making capacity: a physician or clinical psychologist who either is  
33 employed by a developmental disabilities services office named in  
34 section 13.17 of the mental hygiene law, or who has been employed for a  
35 minimum of two years to render care and service in a facility operated  
36 or licensed by the office for people with developmental disabilities, or  
37 has been approved by the commissioner of developmental disabilities in  
38 accordance with regulations promulgated by such commissioner. Such regu-  
39 lations shall require that a physician or clinical psychologist possess  
40 specialized training or three years experience in treating developmental  
41 disabilities. A record of such consultation shall be included in the  
42 patient's medical record.

43 (d) If an attending [~~physician or attending nurse~~] practitioner has  
44 determined that the patient lacks decision-making capacity and if the  
45 health or social services practitioner consulted for a concurring deter-  
46 mination disagrees with the attending [~~physician's or the attending~~  
47 ~~nurse~~] practitioner's determination, the matter shall be referred to the  
48 ethics review committee if it cannot otherwise be resolved.

49 7. Confirmation of continued lack of decision-making capacity. An  
50 attending [~~physician or attending nurse~~] practitioner shall confirm the  
51 adult patient's continued lack of decision-making capacity before  
52 complying with health care decisions made pursuant to this article,  
53 other than those decisions made at or about the time of the initial  
54 determination. A concurring determination of the patient's continued  
55 lack of decision-making capacity shall be required if the subsequent  
56 health care decision concerns the withholding or withdrawal of life-sus-

1 taining treatment. Health care providers shall not be required to inform  
2 the patient or surrogate of the confirmation.

3 § 19. Subdivisions 2, 3 and 5 of section 2994-d of the public health  
4 law, as amended by chapter 430 of the laws of 2017, are amended to read  
5 as follows:

6 2. Restrictions on who may be a surrogate. An operator, administrator,  
7 or employee of a hospital or a mental hygiene facility from which the  
8 patient was transferred, or a physician ~~[or]~~, nurse practitioner or  
9 physician assistant who has privileges at the hospital or a health care  
10 provider under contract with the hospital may not serve as the surrogate  
11 for any adult who is a patient of such hospital, unless such individual  
12 is related to the patient by blood, marriage, domestic partnership, or  
13 adoption, or is a close friend of the patient whose friendship with the  
14 patient preceded the patient's admission to the facility. If a physician  
15 ~~[or]~~, nurse practitioner or physician assistant serves as surrogate, the  
16 physician ~~[or]~~, nurse practitioner or physician assistant shall not act  
17 as the patient's attending ~~[physician or attending nurse]~~ practitioner  
18 after his or her authority as surrogate begins.

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

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

24 (ii) Nothing in this article shall obligate health care providers to  
25 seek the consent of a surrogate if an adult patient has already made a  
26 decision about the proposed health care, expressed orally or in writing  
27 or, with respect to a decision to withdraw or withhold life-sustaining  
28 treatment expressed either orally during hospitalization in the presence  
29 of two witnesses eighteen years of age or older, at least one of whom is  
30 a health or social services practitioner affiliated with the hospital,  
31 or in writing. If an attending ~~[physician or attending nurse]~~ practi-  
32 tioner relies on the patient's prior decision, the physician ~~[or]~~, nurse  
33 practitioner or physician assistant shall record the prior decision in  
34 the patient's medical record. If a surrogate has already been designated  
35 for the patient, the attending ~~[physician or attending nurse]~~ practi-  
36 tioner shall make reasonable efforts to notify the surrogate prior to  
37 implementing the decision; provided that in the case of a decision to  
38 withdraw or withhold life-sustaining treatment, the attending ~~[physician~~  
39 ~~or attending nurse]~~ practitioner shall make diligent efforts to notify  
40 the surrogate and, if unable to notify the surrogate, shall document the  
41 efforts that were made to do so.

42 (b) Commencement of surrogate's authority. The surrogate's authority  
43 shall commence upon a determination, made pursuant to section twenty-  
44 nine hundred ninety-four-c of this article, that the adult patient lacks  
45 decision-making capacity and upon identification of a surrogate pursuant  
46 to subdivision one of this section. In the event an attending ~~[physician~~  
47 ~~or nurse]~~ practitioner determines that the patient has regained deci-  
48 sion-making capacity, the authority of the surrogate shall cease.

49 (c) Right and duty to be informed. Notwithstanding any law to the  
50 contrary, the surrogate shall have the right to receive medical informa-  
51 tion and medical records necessary to make informed decisions about the  
52 patient's health care. Health care providers shall provide and the  
53 surrogate shall seek information necessary to make an informed decision,  
54 including information about the patient's diagnosis, prognosis, the  
55 nature and consequences of proposed health care, and the benefits and  
56 risks of and ~~[alternative]~~ alternatives to proposed health care.

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

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

16 (ii) The provision of treatment would involve such pain, suffering or  
17 other burden that it would reasonably be deemed inhumane or extraor-  
18 dinarily burdensome under the circumstances and the patient has an irre-  
19 versible or incurable condition, as determined by an attending [~~physi-  
20 cian or attending nurse~~] practitioner with the independent concurrence  
21 of another physician [~~or~~], nurse practitioner or physician assistant to  
22 a reasonable degree of medical certainty and in accord with accepted  
23 medical standards.

24 (b) In a residential health care facility, a surrogate shall have the  
25 authority to refuse life-sustaining treatment under subparagraph (ii) of  
26 paragraph (a) of this subdivision only if the ethics review committee,  
27 including at least one physician [~~or~~], nurse practitioner or physician  
28 assistant who is not directly responsible for the patient's care, or a  
29 court of competent jurisdiction, reviews the decision and determines  
30 that it meets the standards set forth in this article. This requirement  
31 shall not apply to a decision to withhold cardiopulmonary resuscitation.

32 (c) In a general hospital, if the attending [~~physician or attending  
33 nurse~~] practitioner objects to a surrogate's decision, under subpara-  
34 graph (ii) of paragraph (a) of this subdivision, to withdraw or withhold  
35 nutrition and hydration provided by means of medical treatment, the  
36 decision shall not be implemented until the ethics review committee,  
37 including at least one physician [~~or~~], nurse practitioner or physician  
38 assistant who is not directly responsible for the patient's care, or a  
39 court of competent jurisdiction, reviews the decision and determines  
40 that it meets the standards set forth in this subdivision and subdivi-  
41 sion four of this section.

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

45 (e) Expression of decisions. The surrogate shall express a decision to  
46 withdraw or withhold life-sustaining treatment either orally to an  
47 attending [~~physician or attending nurse~~] practitioner or in writing.

48 § 20. Subdivisions 2 and 3 of section 2994-e of the public health law,  
49 as amended by chapter 430 of the laws of 2017, are amended to read as  
50 follows:

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

1 (b) An attending [~~physician or attending nurse~~] practitioner, in  
2 consultation with a minor's parent or guardian, shall determine whether  
3 a minor patient has decision-making capacity for a decision to withhold  
4 or withdraw life-sustaining treatment. If the minor has such capacity, a  
5 parent's or guardian's decision to withhold or withdraw life-sustaining  
6 treatment for the minor may not be implemented without the minor's  
7 consent.

8 (c) Where a parent or guardian of a minor patient has made a decision  
9 to withhold or withdraw life-sustaining treatment and an attending  
10 [~~physician or attending nurse~~] practitioner has reason to believe that  
11 the minor patient has a parent or guardian who has not been informed of  
12 the decision, including a non-custodial parent or guardian, an attending  
13 [~~physician, attending nurse~~] practitioner or someone acting on his or her  
14 behalf, shall make reasonable efforts to determine if the uninformed  
15 parent or guardian has maintained substantial and continuous contact  
16 with the minor and, if so, shall make diligent efforts to notify that  
17 parent or guardian prior to implementing the decision.

18 3. Decision-making standards and procedures for emancipated minor  
19 patient. (a) If an attending [~~physician or attending nurse~~] practitioner  
20 determines that a patient is an emancipated minor patient with deci-  
21 sion-making capacity, the patient shall have the authority to decide  
22 about life-sustaining treatment. Such authority shall include a decision  
23 to withhold or withdraw life-sustaining treatment if an attending  
24 [~~physician or attending nurse~~] practitioner and the ethics review  
25 committee determine that the decision accords with the standards for  
26 surrogate decisions for adults, and the ethics review committee approves  
27 the decision.

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

32 § 21. Section 2994-f of the public health law, as amended by chapter  
33 430 of the laws of 2017, is amended to read as follows:

34 § 2994-f. Obligations of attending [~~physician or attending nurse~~]  
35 practitioner. 1. An attending [~~physician or attending nurse~~] practition-  
36 er informed of a decision to withdraw or withhold life-sustaining treat-  
37 ment made pursuant to the standards of this article shall record the  
38 decision in the patient's medical record, review the medical basis for  
39 the decision, and shall either: (a) implement the decision, or (b)  
40 promptly make his or her objection to the decision and the reasons for  
41 the objection known to the decision-maker, and either make all reason-  
42 able efforts to arrange for the transfer of the patient to another  
43 physician [~~or~~], nurse practitioner or physician assistant, if necessary,  
44 or promptly refer the matter to the ethics review committee.

45 2. If an attending [~~physician or attending nurse~~] practitioner has  
46 actual notice of the following objections or disagreements, he or she  
47 shall promptly refer the matter to the ethics review committee if the  
48 objection or disagreement cannot otherwise be resolved:

49 (a) A health or social services practitioner consulted for a concur-  
50 ring determination that an adult patient lacks decision-making capacity  
51 disagrees with the attending [~~physician's or attending nurse~~] practi-  
52 tioner's determination; or

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

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

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

5 (e) A minor patient refuses life-sustaining treatment, and the minor's  
6 parent or guardian wishes the treatment to be provided, or the minor  
7 patient objects to an attending [~~physician's or attending nurse~~] practi-  
8 tioner's determination about decision-making capacity or recommendation  
9 about life-sustaining treatment.

10 3. Notwithstanding the provisions of this section or subdivision one  
11 of section twenty-nine hundred ninety-four-q of this article, if a  
12 surrogate directs the provision of life-sustaining treatment, the denial  
13 of which in reasonable medical judgment would be likely to result in the  
14 death of the patient, a hospital or individual health care provider that  
15 does not wish to provide such treatment shall nonetheless comply with  
16 the surrogate's decision pending either transfer of the patient to a  
17 willing hospital or individual health care provider, or judicial review  
18 in accordance with section twenty-nine hundred ninety-four-r of this  
19 article.

20 § 22. Subdivisions 3, 4, 5, 5-a and 6 of section 2994-g of the public  
21 health law, as amended by chapter 430 of the laws of 2017, are amended  
22 to read as follows:

23 3. Routine medical treatment. (a) For purposes of this subdivision,  
24 "routine medical treatment" means any treatment, service, or procedure  
25 to diagnose or treat an individual's physical or mental condition, such  
26 as the administration of medication, the extraction of bodily fluids for  
27 analysis, or dental care performed with a local anesthetic, for which  
28 health care providers ordinarily do not seek specific consent from the  
29 patient or authorized representative. It shall not include the long-term  
30 provision of treatment such as ventilator support or a nasogastric tube  
31 but shall include such treatment when provided as part of post-operative  
32 care or in response to an acute illness and recovery is reasonably  
33 expected within one month or less.

34 (b) An attending [~~physician or attending nurse~~] practitioner shall be  
35 authorized to decide about routine medical treatment for an adult  
36 patient who has been determined to lack decision-making capacity pursu-  
37 ant to section twenty-nine hundred ninety-four-c of this article. Noth-  
38 ing in this subdivision shall require health care providers to obtain  
39 specific consent for treatment where specific consent is not otherwise  
40 required by law.

41 4. Major medical treatment. (a) For purposes of this subdivision,  
42 "major medical treatment" means any treatment, service or procedure to  
43 diagnose or treat an individual's physical or mental condition: (i)  
44 where general anesthetic is used; or (ii) which involves any significant  
45 risk; or (iii) which involves any significant invasion of bodily integ-  
46 rity requiring an incision, producing substantial pain, discomfort,  
47 debilitation or having a significant recovery period; or (iv) which  
48 involves the use of physical restraints, as specified in regulations  
49 promulgated by the commissioner, except in an emergency; or (v) which  
50 involves the use of psychoactive medications, except when provided as  
51 part of post-operative care or in response to an acute illness and  
52 treatment is reasonably expected to be administered over a period of  
53 forty-eight hours or less, or when provided in an emergency.

54 (b) A decision to provide major medical treatment, made in accordance  
55 with the following requirements, shall be authorized for an adult

1 patient who has been determined to lack decision-making capacity pursu-  
2 ant to section twenty-nine hundred ninety-four-c of this article.

3 (i) An attending [~~physician or attending nurse~~] practitioner shall  
4 make a recommendation in consultation with hospital staff directly  
5 responsible for the patient's care.

6 (ii) In a general hospital, at least one other physician [~~or~~], nurse  
7 practitioner or physician assistant designated by the hospital must  
8 independently determine that he or she concurs that the recommendation  
9 is appropriate.

10 (iii) In a residential health care facility, and for a hospice patient  
11 not in a general hospital, the medical director of the facility or  
12 hospice, or a physician [~~or~~], nurse practitioner or physician assistant  
13 designated by the medical director, must independently determine that he  
14 or she concurs that the recommendation is appropriate; provided that if  
15 the medical director is the patient's attending [~~physician or attending~~  
16 ~~nurse~~] practitioner, a different physician [~~or~~], nurse practitioner or  
17 physician assistant designated by the residential health care facility  
18 or hospice must make this independent determination. Any health or  
19 social services practitioner employed by or otherwise formally affil-  
20 iated with the facility or hospice may provide a second opinion for  
21 decisions about physical restraints made pursuant to this subdivision.

22 5. Decisions to withhold or withdraw life-sustaining treatment. (a) A  
23 court of competent jurisdiction may make a decision to withhold or with-  
24 draw life-sustaining treatment for an adult patient who has been deter-  
25 mined to lack decision-making capacity pursuant to section twenty-nine  
26 hundred ninety-four-c of this article if the court finds that the deci-  
27 sion accords with standards for decisions for adults set forth in subdivi-  
28 sions four and five of section twenty-nine hundred ninety-four-d of  
29 this article.

30 (b) If the attending [~~physician or attending nurse~~] practitioner, with  
31 independent concurrence of a second physician [~~or~~], nurse practitioner  
32 or physician assistant designated by the hospital, determines to a  
33 reasonable degree of medical certainty that:

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

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

43 5-a. Decisions regarding hospice care. An attending [~~physician or~~  
44 ~~attending nurse~~] practitioner shall be authorized to make decisions  
45 regarding hospice care and execute appropriate documents for such deci-  
46 sions (including a hospice election form) for an adult patient under  
47 this section who is hospice eligible in accordance with the following  
48 requirements.

49 (a) The attending [~~physician or attending nurse~~] practitioner shall  
50 make decisions under this section in consultation with staff directly  
51 responsible for the patient's care, and shall base his or her decisions  
52 on the standards for surrogate decisions set forth in subdivisions four  
53 and five of section twenty-nine hundred ninety-four-d of this article;

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

55 (i) in a general hospital, at least one other physician [~~or~~], nurse  
56 practitioner or physician assistant designated by the hospital must

1 independently determine that he or she concurs that the recommendation  
2 is consistent with such standards for surrogate decisions;

3 (ii) in a residential health care facility, the medical director of  
4 the facility, or a physician ~~[or]~~, nurse practitioner or physician  
5 assistant designated by the medical director, must independently deter-  
6 mine that he or she concurs that the recommendation is consistent with  
7 such standards for surrogate decisions; provided that if the medical  
8 director is the patient's attending ~~[physician or attending nurse]~~ prac-  
9 titioner, a different physician ~~[or]~~, nurse practitioner or physician  
10 assistant designated by the residential health care facility must make  
11 this independent determination; or

12 (iii) in settings other than a general hospital or residential health  
13 care facility, the medical director of the hospice, or a physician  
14 designated by the medical director, must independently determine that he  
15 or she concurs that the recommendation is medically appropriate and  
16 consistent with such standards for surrogate decisions; provided that if  
17 the medical director is the patient's attending physician, a different  
18 physician designated by the hospice must make this independent determi-  
19 nation; and

20 (c) The ethics review committee of the general hospital, residential  
21 health care facility or hospice, as applicable, including at least one  
22 physician ~~[or]~~, nurse practitioner or physician assistant who is not the  
23 patient's attending ~~[physician or attending nurse]~~ practitioner, or a  
24 court of competent jurisdiction, must review the decision and determine  
25 that it is consistent with such standards for surrogate decisions.

26 6. Physician ~~[or]~~, nurse practitioner or physician assistant  
27 objection. If a physician ~~[or]~~, nurse practitioner or physician assist-  
28 ant consulted for a concurring opinion objects to an attending ~~[physi-~~  
29 ~~cian's or attending nurse]~~ practitioner's recommendation or determi-  
30 nation made pursuant to this section, or a member of the hospital staff  
31 directly responsible for the patient's care objects to an attending  
32 ~~[physician's or attending nurse]~~ practitioner's recommendation about  
33 major medical treatment or treatment without medical benefit, the matter  
34 shall be referred to the ethics review committee if it cannot be other-  
35 wise resolved.

36 § 23. Section 2994-j of the public health law, as amended by chapter  
37 430 of the laws of 2017, is amended to read as follows:

38 § 2994-j. Revocation of consent. 1. A patient, surrogate, or parent or  
39 guardian of a minor patient may at any time revoke his or her consent to  
40 withhold or withdraw life-sustaining treatment by informing an attending  
41 ~~[physician, attending nurse]~~ practitioner or a member of the medical or  
42 nursing staff of the revocation.

43 2. An attending ~~[physician or attending nurse]~~ practitioner informed  
44 of a revocation of consent made pursuant to this section shall imme-  
45 diately:

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

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

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

51 3. Any member of the medical or nursing staff, other than a nurse  
52 practitioner or physician assistant, informed of a revocation made  
53 pursuant to this section shall immediately notify an attending ~~[physi-~~  
54 ~~cian or attending nurse]~~ practitioner of the revocation.

1 § 24. The opening paragraph of subdivision 2 of section 2994-k of the  
2 public health law, as amended by chapter 430 of the laws of 2017, is  
3 amended to read as follows:

4 If a decision to withhold or withdraw life-sustaining treatment has  
5 been made pursuant to this article, and an attending [~~physician or~~  
6 ~~attending nurse~~] practitioner determines at any time that the decision  
7 is no longer appropriate or authorized because the patient has regained  
8 decision-making capacity or because the patient's condition has other-  
9 wise improved, the physician [~~or~~], nurse practitioner or physician  
10 assistant shall immediately:

11 § 25. Section 2994-l of the public health law, as amended by chapter  
12 430 of the laws of 2017, is amended to read as follows:

13 § 2994-l. Interinstitutional transfers. If a patient with an order to  
14 withhold or withdraw life-sustaining treatment is transferred from a  
15 mental hygiene facility to a hospital or from a hospital to a different  
16 hospital, any such order or plan shall remain effective until an attend-  
17 ing [~~physician or attending nurse~~] practitioner first examines the  
18 transferred patient, whereupon an attending [~~physician or attending~~  
19 ~~nurse~~] practitioner must either:

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

23 2. Cancel such order, if the attending [~~physician or attending nurse~~]  
24 practitioner determines that the order is no longer appropriate or  
25 authorized. Before canceling the order the attending [~~physician or~~  
26 ~~attending nurse~~] practitioner shall make reasonable efforts to notify  
27 the person who made the decision to withhold or withdraw treatment and  
28 the hospital staff directly responsible for the patient's care of any  
29 such cancellation. If such notice cannot reasonably be made prior to  
30 canceling the order or plan, the attending [~~physician or attending~~  
31 ~~nurse~~] practitioner shall make such notice as soon as reasonably practi-  
32 cable after cancellation.

33 § 26. Subdivisions 3 and 4 of section 2994-m of the public health law,  
34 as amended by chapter 430 of the laws of 2017, are amended to read as  
35 follows:

36 3. Committee membership. The membership of ethics review committees  
37 must be interdisciplinary and must include at least five members who  
38 have demonstrated an interest in or commitment to patient's rights or to  
39 the medical, public health, or social needs of those who are ill. At  
40 least three ethics review committee members must be health or social  
41 services practitioners, at least one of whom must be a registered nurse  
42 and one of whom must be a physician [~~or~~], nurse practitioner or physi-  
43 cian assistant. At least one member must be a person without any gover-  
44 nance, employment or contractual relationship with the hospital. In a  
45 residential health care facility the facility must offer the residents'  
46 council of the facility (or of another facility that participates in the  
47 committee) the opportunity to appoint up to two persons to the ethics  
48 review committee, none of whom may be a resident of or a family member  
49 of a resident of such facility, and both of whom shall be persons who  
50 have expertise in or a demonstrated commitment to patient rights or to  
51 the care and treatment of the elderly or nursing home residents through  
52 professional or community activities, other than activities performed as  
53 a health care provider.

54 4. Procedures for ethics review committee. (a) These procedures are  
55 required only when: (i) the ethics review committee is convened to  
56 review a decision by a surrogate to withhold or withdraw life-sustaining

1 treatment for: (A) a patient in a residential health care facility  
2 pursuant to paragraph (b) of subdivision five of section twenty-nine  
3 hundred ninety-four-d of this article; (B) a patient in a general hospi-  
4 tal pursuant to paragraph (c) of subdivision five of section twenty-nine  
5 hundred ninety-four-d of this article; or (C) an emancipated minor  
6 patient pursuant to subdivision three of section twenty-nine hundred  
7 ninety-four-e of this article; or (ii) when a person connected with the  
8 case requests the ethics review committee to provide assistance in  
9 resolving a dispute about proposed care. Nothing in this section shall  
10 bar health care providers from first striving to resolve disputes  
11 through less formal means, including the informal solicitation of  
12 ethical advice from any source.

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

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

24 (iii) The ethics review committee shall promptly provide the patient,  
25 where there is any indication of the patient's ability to comprehend the  
26 information, the surrogate, other persons on the surrogate list directly  
27 involved in the decision or dispute regarding the patient's care, any  
28 parent or guardian of a minor patient directly involved in the decision  
29 or dispute regarding the minor patient's care, an attending [~~physician,~~  
30 ~~an attending nurse~~] practitioner, the hospital, and other persons the  
31 committee deems appropriate, with the following:

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

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

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

47 (c) When an ethics review committee is convened to review decisions  
48 regarding hospice care for a patient in a general hospital or residen-  
49 tial health care facility, the responsibilities of this section shall be  
50 carried out by the ethics review committee of the general hospital or  
51 residential health care facility, provided that such committee shall  
52 invite a representative from hospice to participate.

53 § 27. Paragraph (b) of subdivision 4 of section 2994-r of the public  
54 health law, as amended by chapter 430 of the laws of 2017, is amended to  
55 read as follows:

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

5 (i) the hospital administrator;

6 (ii) an attending [~~physician or attending nurse~~] practitioner;

7 (iii) the local commissioner of social services or the local commis-  
8 sioner of health, authorized to make medical treatment decisions for the  
9 minor pursuant to section three hundred eighty-three-b of the social  
10 services law; or

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

13 § 28. Subdivision 1 of section 2994-s of the public health law, as  
14 amended by chapter 430 of the laws of 2017, is amended to read as  
15 follows:

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

22 (a) when a hospital, physician [~~or~~], nurse practitioner or physician  
23 assistant exercises the rights granted by section twenty-nine hundred  
24 ninety-four-n of this article, provided that the physician, nurse prac-  
25 titioner, physician assistant or hospital promptly fulfills the obli-  
26 gations set forth in section twenty-nine hundred ninety-four-n of this  
27 article;

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

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

33 (d) if the physician, nurse practitioner, physician assistant or  
34 hospital prevails in any litigation concerning the surrogate's decision  
35 to refuse the treatment, services or procedure. Nothing in this section  
36 shall determine or affect how disputes among individuals on the surro-  
37 gate list are resolved.

38 § 29. Subdivision 2 of section 2994-aa of the public health law, as  
39 amended by chapter 430 of the laws of 2017, is amended to read as  
40 follows:

41 2. "Attending physician" means the physician who has primary responsi-  
42 bility for the treatment and care of the patient. Where more than one  
43 physician [~~or~~], nurse practitioner or physician assistant shares such  
44 responsibility, any such physician [~~or~~], nurse practitioner or physician  
45 assistant may act as the attending [~~physician or attending nurse~~] prac-  
46 titioner pursuant to this article.

47 § 30. Section 2994-cc of the public health law, as amended by chapter  
48 430 of the laws of 2017, is amended to read as follows:

49 § 2994-cc. Consent to a nonhospital order not to resuscitate. 1. An  
50 adult with decision-making capacity, a health care agent, or a surrogate  
51 may consent to a nonhospital order not to resuscitate orally to the  
52 attending [~~physician or attending nurse~~] practitioner or in writing. If  
53 a patient consents to a nonhospital order not to resuscitate while in a  
54 correctional facility, notice of the patient's consent shall be given to  
55 the facility director and reasonable efforts shall be made to notify an  
56 individual designated by the patient to receive such notice prior to the

1 issuance of the nonhospital order not to resuscitate. Notification to  
2 the facility director or the individual designated by the patient shall  
3 not delay issuance of a nonhospital order not to resuscitate.

4 2. Consent by a health care agent shall be governed by article twen-  
5 ty-nine-C of this chapter.

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

12 4. (a) When the concurrence of a second physician [~~or~~], nurse practi-  
13 tioner or physician assistant is sought to fulfill the requirements for  
14 the issuance of a nonhospital order not to resuscitate for patients in a  
15 correctional facility, such second physician [~~or~~], nurse practitioner or  
16 physician assistant shall be selected by the chief medical officer of  
17 the department of corrections and community supervision or his or her  
18 designee.

19 (b) When the concurrence of a second physician [~~or~~], nurse practition-  
20 er or physician assistant is sought to fulfill the requirements for the  
21 issuance of a nonhospital order not to resuscitate for hospice and home  
22 care patients, such second physician [~~or~~], nurse practitioner or physi-  
23 cian assistant shall be selected by the hospice medical director or  
24 hospice nurse coordinator designated by the medical director or by the  
25 home care services agency director of patient care services, as appro-  
26 priate to the patient.

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

30 § 31. Section 2994-dd of the public health law, as amended by chapter  
31 430 of the laws of 2017, is amended to read as follows:

32 § 2994-dd. Managing a nonhospital order not to resuscitate. 1. The  
33 attending [~~physician or attending nurse~~] practitioner shall record the  
34 issuance of a nonhospital order not to resuscitate in the patient's  
35 medical record.

36 2. A nonhospital order not to resuscitate shall be issued upon a stan-  
37 dard form prescribed by the commissioner. The commissioner shall also  
38 develop a standard bracelet that may be worn by a patient with a nonhos-  
39 pital order not to resuscitate to identify that status; provided, howev-  
40 er, that no person may require a patient to wear such a bracelet and  
41 that no person may require a patient to wear such a bracelet as a condi-  
42 tion for honoring a nonhospital order not to resuscitate or for provid-  
43 ing health care services.

44 3. An attending [~~physician or attending nurse~~] practitioner who has  
45 issued a nonhospital order not to resuscitate, and who transfers care of  
46 the patient to another physician [~~or~~], nurse practitioner or physician  
47 assistant, shall inform the physician [~~or~~], nurse practitioner or physi-  
48 cian assistant of the order.

49 4. For each patient for whom a nonhospital order not to resuscitate  
50 has been issued, the attending [~~physician or attending nurse~~] practi-  
51 tioner shall review whether the order is still appropriate in light of  
52 the patient's condition each time he or she examines the patient, wheth-  
53 er in the hospital or elsewhere, but at least every ninety days,  
54 provided that the review need not occur more than once every seven days.  
55 The attending [~~physician or attending nurse~~] practitioner shall record  
56 the review in the patient's medical record provided, however, that a

1 physician assistant or a registered nurse, other than the attending  
2 nurse practitioner, who provides direct care to the patient may record  
3 the review in the medical record at the direction of the physician. In  
4 such case, the attending [~~physician or attending nurse~~] practitioner  
5 shall include a confirmation of the review in the patient's medical  
6 record within fourteen days of such review. Failure to comply with this  
7 subdivision shall not render a nonhospital order not to resuscitate  
8 ineffective.

9 5. A person who has consented to a nonhospital order not to resusci-  
10 tate may at any time revoke his or her consent to the order by any act  
11 evidencing a specific intent to revoke such consent. Any health care  
12 professional, other than the attending [~~physician or attending nurse~~]  
13 practitioner, informed of a revocation of consent to a nonhospital order  
14 not to resuscitate shall notify the attending [~~physician or attending~~  
15 ~~nurse~~] practitioner of the revocation. An attending [~~physician or~~  
16 ~~attending nurse~~] practitioner who is informed that a nonhospital order  
17 not to resuscitate has been revoked shall record the revocation in the  
18 patient's medical record, cancel the order and make diligent efforts to  
19 retrieve the form issuing the order, and the standard bracelet, if any.

20 6. The commissioner may authorize the use of one or more alternative  
21 forms for issuing a nonhospital order not to resuscitate (in place of  
22 the standard form prescribed by the commissioner under subdivision two  
23 of this section). Such alternative form or forms may also be used to  
24 issue a non-hospital do not intubate order. Any such alternative forms  
25 intended for use for persons with developmental disabilities or persons  
26 with mental illness who are incapable of making their own health care  
27 decisions or who have a guardian of the person appointed pursuant to  
28 article eighty-one of the mental hygiene law or article seventeen-A of  
29 the surrogate's court procedure act must also be approved by the commis-  
30 sioner of developmental disabilities or the commissioner of mental  
31 health, as appropriate. An alternative form under this subdivision shall  
32 otherwise conform with applicable federal and state law. This subdivi-  
33 sion does not limit, restrict or impair the use of an alternative form  
34 for issuing an order not to resuscitate in a general hospital or resi-  
35 dential health care facility under article twenty-eight of this chapter  
36 or a hospital under subdivision ten of section 1.03 of the mental  
37 hygiene law.

38 § 32. Subdivision 2 of section 2994-ee of the public health law, as  
39 amended by chapter 430 of the laws of 2017, is amended to read as  
40 follows:

41 2. Hospital emergency services physicians and hospital emergency  
42 services nurse practitioners and physician assistants may direct that  
43 the order be disregarded if other significant and exceptional medical  
44 circumstances warrant disregarding the order.

45 § 33. This act shall take effect on the one hundred eightieth day  
46 after it shall become a law. Effective immediately, any rules and regu-  
47 lations necessary to implement the provisions of this act on its effec-  
48 tive date are authorized and directed to be amended, repealed and/or  
49 promulgated on or before such date.