

STATE OF NEW YORK

3991--B

Cal. No. 304

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. GOTTFRIED, ABINANTI, SEPULVEDA -- 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 -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 cite (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12 In 2010, the former DNR law was superseded by the Family Health Care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") §1750-b does not have a standard
18 specifically relating to medically futile resuscitation for develop-
19 mentally disabled patients.

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

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1 The legislature finds that the broader FHCD and SPCA §1750-b stand-
2 ards are difficult to apply to situations in which resuscitation would
3 be medically futile. Accordingly, this bill restores the former DNR
4 law's medical futility standard as an alternative basis for writing a
5 DNR order under the FHCD and under SPCA §1750-b.

6 § 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 5 of
7 section 2994-d of the public health law, as amended by chapter 430 of
8 the laws of 2017, are amended and a new subparagraph (iii) is added to
9 read as follows:

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

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

25 (iii) With respect to a decision to enter an order not to resuscitate,
26 an attending physician determines, with the independent concurrence of a
27 second physician, to a reasonable degree of medical certainty, that in
28 the event of a cardiac or respiratory arrest, resuscitation would be
29 unsuccessful in restoring cardiac and respiratory function or that the
30 patient will experience repeated arrest in a short time period before
31 death occurs.

32 § 3. Paragraph (b) of subdivision 5 of section 2994-g of the public
33 health law, as amended by chapter 430 of the laws of 2017, is amended to
34 read as follows:

35 (b) If the attending physician or attending nurse practitioner, with
36 independent concurrence of a second physician or nurse practitioner
37 designated by the hospital, determines to a reasonable degree of medical
38 certainty that:

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

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

49 (ii) in the event of cardiac or respiratory arrest, resuscitation will
50 be unsuccessful in restoring cardiac and respiratory function or that
51 the patient will experience repeated arrest in a short time period
52 before death occurs, then an order not to resuscitate may be entered for
53 an adult patient who has been determined to lack decision-making capaci-
54 ty pursuant to section twenty-nine hundred ninety-four-c of this arti-
55 cle, without judicial approval.

§ 4. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 4 of section 1750-b of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, are amended to read as follows:

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

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

B. permanent unconsciousness; or

C. a medical condition other than such person's intellectual disability which requires life-sustaining treatment, is irreversible and which will continue indefinitely; ~~[and]~~ or

D. in the case of a decision to enter an order not to resuscitate, that in the event of cardiac or respiratory arrest such resuscitation would be unsuccessful in restoring cardiac and respiratory function or that the patient will experience repeated arrest in a short time period before death occurs; and

(ii) except in the case of a decision to enter an order not to resuscitate based on clause D of subparagraph (i) of this paragraph, the life-sustaining treatment would impose an extraordinary burden on such person, in light of:

A. such person's medical condition, other than such person's intellectual disability; and

B. the expected outcome of the life-sustaining treatment, notwithstanding such person's intellectual disability; and

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if chapter 430 of the laws of 2017 shall not have taken effect on or before such date, then sections two and three of this act shall take effect on the same date as chapter 430 of the laws of 2017, takes effect.