

STATE OF NEW YORK

7277

2017-2018 Regular Sessions

IN ASSEMBLY

April 17, 2017

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

AN ACT to amend the public health law, in relation to authorizing nurse practitioners to execute orders not to resuscitate and orders pertaining to life sustaining treatments

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 added by chapter
2 818 of the laws of 1987, 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 circumstances,
7 to issue an order not to attempt cardiopulmonary resuscitation of a
8 patient where appropriate consent has been obtained. The legislature
9 further finds that there is a need to clarify and establish the rights
10 and obligations of patients, their families, and health care providers
11 regarding cardiopulmonary resuscitation and the issuance of orders not
12 to resuscitate.

13 § 2. Subdivisions 2, 5 and 20 of section 2961 of the public health
14 law, subdivisions 2 and 5 as amended by chapter 8 of the laws of 2010,
15 and subdivision 20 as added by chapter 818 of the laws of 1987 and as
16 renumbered by chapter 370 of the laws of 1991, are amended and two new
17 subdivisions 2-a and 16 are added to read as follows:

18 2. "Attending physician" means the physician selected by or assigned
19 to a patient in a hospital who has primary responsibility for the treat-
20 ment and care of the patient. Where more than one physician and/or nurse
21 practitioner shares such responsibility, any such physician or nurse
22 practitioner may act as the attending physician or attending nurse prac-
23 titioner pursuant to this article.

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

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1 2-a. "Attending nurse practitioner" means the nurse practitioner
2 selected by or assigned to a patient in a hospital who has primary
3 responsibility for the treatment and care of the patient. Where more
4 than one physician and/or nurse practitioner shares such responsibility,
5 any such physician or nurse practitioner may act as the attending physi-
6 cian or attending nurse practitioner pursuant to this article.

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

14 16. "Nurse practitioner" means a nurse practitioner certified pursuant
15 to section sixty-nine hundred ten of the education law who is practicing
16 in accordance with subdivision three of section sixty-nine hundred two
17 of the education law.

18 20. "Reasonably available" means that a person to be contacted can be
19 contacted with diligent efforts by an attending physician, attending
20 nurse practitioner or another person acting on behalf of the attending
21 physician, attending nurse practitioner or the hospital.

22 § 3. Subdivisions 2 and 3 of section 2962 of the public health law, as
23 added by chapter 818 of the laws of 1987, are amended to read as
24 follows:

25 2. It shall be lawful for the attending physician or attending nurse
26 practitioner to issue an order not to resuscitate a patient, provided
27 that the order has been issued pursuant to the requirements of this
28 article. The order shall be included in writing in the patient's chart.
29 An order not to resuscitate shall be effective upon issuance.

30 3. Before obtaining, pursuant to this article, the consent of the
31 patient, or of the surrogate of the patient, or parent or legal guardian
32 of the minor patient, to an order not to resuscitate, the attending
33 physician or attending nurse practitioner shall provide to the person
34 giving consent information about the patient's diagnosis and prognosis,
35 the reasonably foreseeable risks and benefits of cardiopulmonary resus-
36 citation for the patient, and the consequences of an order not to resus-
37 citate.

38 § 4. Section 2963 of the public health law, as added by chapter 818 of
39 the laws of 1987, subdivision 1, paragraph (b) of subdivision 3 and
40 subdivision 4 as amended by chapter 8 of the laws of 2010, paragraph (c)
41 of subdivision 3 as amended by section 5 of part J of chapter 56 of the
42 laws of 2012, is amended to read as follows:

43 § 2963. Determination of capacity to make a decision regarding
44 cardiopulmonary resuscitation. 1. Every adult shall be presumed to have
45 the capacity to make a decision regarding cardiopulmonary resuscitation
46 unless determined otherwise pursuant to this section or pursuant to a
47 court order or unless a guardian is authorized to decide about health
48 care for the adult pursuant to article eighty-one of the mental hygiene
49 law or article seventeen-A of the surrogate's court procedure act. The
50 attending physician or attending nurse practitioner shall not rely on
51 the presumption stated in this subdivision if clinical indicia of inca-
52 pacity are present.

53 2. A determination that an adult patient lacks capacity shall be made
54 by the attending physician or attending nurse practitioner to a reason-
55 able degree of medical certainty. The determination shall be made in
56 writing and shall contain such attending physician's or attending nurse

1 practitioner's opinion regarding the cause and nature of the patient's
2 incapacity as well as its extent and probable duration. The determi-
3 nation shall be included in the patient's medical chart.

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

11 (b) If the attending physician or attending nurse practitioner deter-
12 mines that a patient lacks capacity because of mental illness, the
13 concurring determination required by paragraph (a) of this subdivision
14 shall be provided by a physician licensed to practice medicine in New
15 York state, who is a diplomate or eligible to be certified by the Ameri-
16 can Board of Psychiatry and Neurology or who is certified by the Ameri-
17 can Osteopathic Board of Neurology and Psychiatry or is eligible to be
18 certified by that board.

19 (c) If the attending physician or attending nurse practitioner deter-
20 mines that a patient lacks capacity because of a developmental disabili-
21 ty, the concurring determination required by paragraph (a) of this
22 subdivision shall be provided by a physician or psychologist employed by
23 a developmental disabilities services office named in section 13.17 of
24 the mental hygiene law, or who has been employed for a minimum of two
25 years to render care and service in a facility operated or licensed by
26 the office for people with developmental disabilities, or who has been
27 approved by the commissioner of developmental disabilities in accordance
28 with regulations promulgated by such commissioner. Such regulations
29 shall require that a physician or psychologist possess specialized
30 training or three years experience in treating developmental disabili-
31 ties.

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

41 5. A determination that a patient lacks capacity to make a decision
42 regarding an order not to resuscitate pursuant to this section shall not
43 be construed as a finding that the patient lacks capacity for any other
44 purpose.

45 § 5. Subdivision 2 of section 2964 of the public health law, as added
46 by chapter 818 of the laws of 1987, is amended to read as follows:

47 2. (a) During hospitalization, an adult with capacity may express a
48 decision consenting to an order not to resuscitate orally in the pres-
49 ence of at least two witnesses eighteen years of age or older, one of
50 whom is a physician or nurse practitioner affiliated with the hospital
51 in which the patient is being treated. Any such decision shall be
52 recorded in the patient's medical chart.

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

1 (c) An attending physician or attending nurse practitioner who is
2 provided with or informed of a decision pursuant to this subdivision
3 shall record or include the decision in the patient's medical chart if
4 the decision has not been recorded or included, and either:

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

9 (ii) promptly make his or her objection to the issuance of such an
10 order and the reasons therefor known to the patient and either make all
11 reasonable efforts to arrange for the transfer of the patient to another
12 physician or nurse practitioner, if necessary, or promptly submit the
13 matter to the dispute mediation system.

14 (d) Prior to issuing an order not to resuscitate a patient who has
15 expressed a decision consenting to an order not to resuscitate under
16 specified medical conditions, the attending physician or attending nurse
17 practitioner must make a determination, to a reasonable degree of
18 medical certainty, that such conditions exist, and include the determi-
19 nation in the patient's medical chart.

20 § 6. Subdivision 5 of section 2964 of the public health law is renum-
21 bered subdivision 3.

22 § 7. Subdivisions 3 and 4 of section 2965 of the public health law, as
23 added by chapter 818 of the laws of 1987 and as renumbered by chapter
24 370 of the laws of 1991, paragraph (a) of subdivision 4 as amended by
25 chapter 370 of the laws of 1991 and paragraph (c) of subdivision 4 as
26 amended by chapter 8 of the laws of 2010, are amended to read as
27 follows:

28 3. (a) The surrogate shall make a decision regarding cardiopulmonary
29 resuscitation on the basis of the adult patient's wishes including a
30 consideration of the patient's religious and moral beliefs, or, if the
31 patient's wishes are unknown and cannot be ascertained, on the basis of
32 the patient's best interests.

33 (b) Notwithstanding any law to the contrary, the surrogate shall have
34 the same right as the patient to receive medical information and medical
35 records.

36 (c) A surrogate may consent to an order not to resuscitate on behalf
37 of an adult patient only if there has been a determination by an attend-
38 ing physician or attending nurse practitioner with the concurrence of
39 another physician or nurse practitioner selected by a person authorized
40 by the hospital to make such selection, given after personal examination
41 of the patient that, to a reasonable degree of medical certainty:

42 (i) the patient has a terminal condition; or
43 (ii) the patient is permanently unconscious; or
44 (iii) resuscitation would be medically futile; or
45 (iv) resuscitation would impose an extraordinary burden on the patient
46 in light of the patient's medical condition and the expected outcome of
47 resuscitation for the patient.

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

49 4. (a) A surrogate shall express a decision consenting to an order not
50 to resuscitate either (i) in writing, dated, and signed in the presence
51 of one witness eighteen years of age or older who shall sign the deci-
52 sion, or (ii) orally, to two persons eighteen years of age or older, one
53 of whom is a physician or nurse practitioner affiliated with the hospi-
54 tal in which the patient is being treated. Any such decision shall be
55 recorded in the patient's medical chart.

1 (b) The attending physician or attending nurse practitioner who is
2 provided with the decision of a surrogate shall include the decision in
3 the patient's medical chart and, if the surrogate has consented to the
4 issuance of an order not to resuscitate, shall either:

5 (i) promptly issue an order not to resuscitate the patient and inform
6 the hospital staff responsible for the patient's care of the order; or

7 (ii) promptly make the attending physician's or attending nurse prac-
8 titioner's objection to the issuance of such an order known to the
9 surrogate and either make all reasonable efforts to arrange for the
10 transfer of the patient to another physician or nurse practitioner, if
11 necessary, or promptly refer the matter to the dispute mediation system.

12 (c) If the attending physician or attending nurse practitioner has
13 actual notice of opposition to a surrogate's consent to an order not to
14 resuscitate by any person on the surrogate list, the physician or nurse
15 practitioner shall submit the matter to the dispute mediation system and
16 such order shall not be issued or shall be revoked in accordance with
17 the provisions of subdivision three of section twenty-nine hundred
18 seventy-two of this article.

19 § 8. Section 2966 of the public health law, as added by chapter 818 of
20 the laws of 1987, subdivision 3 as amended by chapter 8 of the laws of
21 2010, is amended to read as follows:

22 § 2966. Decision-making on behalf of an adult patient without capacity
23 for whom no surrogate is available. 1. If no surrogate is reasonably
24 available, willing to make a decision regarding issuance of an order not
25 to resuscitate, and competent to make a decision regarding issuance of
26 an order not to resuscitate on behalf of an adult patient who lacks
27 capacity and who had not previously expressed a decision regarding
28 cardiopulmonary resuscitation, an attending physician or attending nurse
29 practitioner (a) may issue an order not to resuscitate the patient,
30 provided that the attending physician or attending nurse practitioner
31 determines, in writing, that, to a reasonable degree of medical certain-
32 ty, resuscitation would be medically futile, and another physician or
33 nurse practitioner selected by a person authorized by the hospital to
34 make such selection, after personal examination of the patient, reviews
35 and concurs in writing with such determination, or, (b) shall issue an
36 order not to resuscitate the patient, provided that, pursuant to subdi-
37 vision one of section twenty-nine hundred seventy-six of this article, a
38 court has granted a judgment directing the issuance of such an order.

39 [3] 2. Notwithstanding any other provision of this section, where a
40 decision to consent to an order not to resuscitate has been made, notice
41 of the decision shall be given to the patient where there is any indi-
42 cation of the patient's ability to comprehend such notice. If the
43 patient objects, an order not to resuscitate shall not be issued.

44 § 9. Section 2967 of the public health law, as added by chapter 818 of
45 the laws of 1987, paragraph (b) of subdivision 2, subdivision 3 and
46 paragraphs (a) and (b) of subdivision 4 as amended by chapter 370 of the
47 laws of 1991, is amended to read as follows:

48 § 2967. Decision-making on behalf of a minor patient. 1. An attending
49 physician or attending nurse practitioner, in consultation with a
50 minor's parent or legal guardian, shall determine whether a minor has
51 the capacity to make a decision regarding resuscitation.

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

55 (b) Where the attending physician or attending nurse practitioner has
56 reason to believe that there is another parent or a non-custodial parent

1 who has not been informed of a decision to issue an order not to resus-
2 citate the minor, the attending physician or attending nurse practition-
3 er, or someone acting on behalf of the attending physician or attending
4 nurse practitioner, shall make reasonable efforts to determine if the
5 uninformed parent or non-custodial parent has maintained substantial and
6 continuous contact with the minor and, if so, shall make diligent
7 efforts to notify that parent or non-custodial parent of the decision
8 prior to issuing the order.

9 3. A parent or legal guardian may consent to an order not to resusci-
10 tate on behalf of a minor only if there has been a written determination
11 by the attending physician or attending nurse practitioner, with the
12 written concurrence of another physician or nurse practitioner selected
13 by a person authorized by the hospital to make such selections given
14 after personal examination of the patient, that, to a reasonable degree
15 of medical certainty, the minor suffers from one of the medical condi-
16 tions set forth in paragraph (c) of subdivision three of section twen-
17 ty-nine hundred sixty-five of this article. Each determination shall be
18 included in the patient's medical chart.

19 4. (a) A parent or legal guardian of a minor, in making a decision
20 regarding cardiopulmonary resuscitation, shall consider the minor
21 patient's wishes, including a consideration of the minor patient's reli-
22 gious and moral beliefs, and shall express a decision consenting to
23 issuance of an order not to resuscitate either (i) in writing, dated and
24 signed in the presence of one witness eighteen years of age or older who
25 shall sign the decision, or (ii) orally, to two persons eighteen years
26 of age or older, one of whom is a physician or nurse practitioner affil-
27 iated with the hospital in which the patient is being treated. Any such
28 decision shall be recorded in the patient's medical chart.

29 (b) The attending physician or attending nurse practitioner who is
30 provided with the decision of a minor's parent or legal guardian,
31 expressed pursuant to this subdivision, and of the minor if the minor
32 has capacity, shall include such decision or decisions in the minor's
33 medical chart and shall comply with the provisions of paragraph (b) of
34 subdivision four of section twenty-nine hundred sixty-five of this arti-
35 cle.

36 (c) If the attending physician or attending nurse practitioner has
37 actual notice of the opposition of a parent or non-custodial parent to
38 consent by another parent to an order not to resuscitate a minor, the
39 physician or nurse practitioner shall submit the matter to the dispute
40 mediation system and such order shall not be issued or shall be revoked
41 in accordance with the provisions of subdivision three of section twen-
42 ty-nine hundred seventy-two of this article.

43 § 10. Section 2969 of the public health law, as added by chapter 818
44 of the laws of 1987, subdivision 2 as amended by chapter 370 of the laws
45 of 1991, is amended to read as follows:

46 § 2969. Revocation of consent to order not to resuscitate. 1. A person
47 may, at any time, revoke his or her consent to an order not to resusci-
48 tate himself or herself by making either a written or an oral declara-
49 tion to a physician or member of the nursing staff at the hospital where
50 he or she is being treated, or by any other act evidencing a specific
51 intent to revoke such consent.

52 2. Any surrogate, parent, or legal guardian may at any time revoke his
53 or her consent to an order not to resuscitate a patient by (a) notifying
54 a physician or member of the nursing staff of the revocation of consent
55 in writing, dated and signed, or (b) orally notifying the attending

1 physician or attending nurse practitioner in the presence of a witness
2 eighteen years of age or older.

3 3. Any physician or nurse practitioner who is informed of or provided
4 with a revocation of consent pursuant to this section shall immediately
5 include the revocation in the patient's chart, cancel the order, and
6 notify the hospital staff responsible for the patient's care of the
7 revocation and cancellation. Any member of the nursing staff, other than
8 a nurse practitioner, who is informed of or provided with a revocation
9 of consent pursuant to this section shall immediately notify a physician
10 or nurse practitioner of such revocation.

11 § 11. Section 2970 of the public health law, as added by chapter 818
12 of the laws of 1987, subdivision 1 as amended by chapter 8 of the laws
13 of 2010, paragraph (b) of subdivision 2 as amended by chapter 370 of the
14 laws of 1991, is amended to read as follows:

15 § 2970. Physician and nurse practitioner review of the order not to
16 resuscitate. 1. For each patient for whom an order not to resuscitate
17 has been issued, the attending physician or attending nurse practitioner
18 shall review the patient's chart to determine if the order is still
19 appropriate in light of the patient's condition and shall indicate on
20 the patient's chart that the order has been reviewed each time the
21 patient is required to be seen by a physician but at least every sixty
22 days.

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

25 2. (a) If the attending physician or attending nurse practitioner
26 determines at any time that an order not to resuscitate is no longer
27 appropriate because the patient's medical condition has improved, the
28 physician or nurse practitioner shall immediately notify the person who
29 consented to the order. Except as provided in paragraph (b) of this
30 subdivision, if such person declines to revoke consent to the order, the
31 physician or nurse practitioner shall promptly (i) make reasonable
32 efforts to arrange for the transfer of the patient to another physician
33 or (ii) submit the matter to the dispute mediation system.

34 (b) If the order not to resuscitate was entered upon the consent of a
35 surrogate, parent, or legal guardian and the attending physician or
36 attending nurse practitioner who issued the order, or, if unavailable,
37 another attending physician or attending nurse practitioner at any time
38 determines that the patient does not suffer from one of the medical
39 conditions set forth in paragraph (c) of subdivision three of section
40 twenty-nine hundred sixty-five of this article, the attending physician
41 or attending nurse practitioner shall immediately include such determi-
42 nation in the patient's chart, cancel the order, and notify the person
43 who consented to the order and all hospital staff responsible for the
44 patient's care of the cancellation.

45 (c) If an order not to resuscitate was entered upon the consent of a
46 surrogate and the patient at any time gains or regains capacity, the
47 attending physician or attending nurse practitioner who issued the
48 order, or, if unavailable, another attending physician or attending
49 nurse practitioner shall immediately cancel the order and notify the
50 person who consented to the order and all hospital staff directly
51 responsible for the patient's care of the cancellation.

52 § 12. The opening paragraph and subdivision 2 of section 2971 of the
53 public health law, as amended by chapter 370 of the laws of 1991, are
54 amended to read as follows:

55 If a patient for whom an order not to resuscitate has been issued is
56 transferred from a hospital to a different hospital the order shall

1 remain effective, unless revoked pursuant to this article, until the
2 attending physician or attending nurse practitioner first examines the
3 transferred patient, whereupon the attending physician or attending
4 nurse practitioner must either:

5 2. Cancel the order not to resuscitate, provided the attending physi-
6 cian or attending nurse practitioner immediately notifies the person who
7 consented to the order and the hospital staff directly responsible for
8 the patient's care of the cancellation. Such cancellation does not
9 preclude the entry of a new order pursuant to this article.

10 § 13. Subdivisions 1, 2 and 4 of section 2972 of the public health
11 law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987,
12 paragraph (b) of subdivision 1 as amended by chapter 370 of the laws of
13 1991 and subdivision 2 as amended by chapter 8 of the laws of 2010, are
14 amended to read as follows:

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

18 (b) The dispute mediation system shall be described in writing and
19 adopted by the hospital's governing authority. It may utilize existing
20 hospital resources, such as a patient advocate's office or hospital
21 chaplain's office, or it may utilize a body created specifically for
22 this purpose, but, in the event a dispute involves a patient deemed to
23 lack capacity pursuant to (i) paragraph (b) of subdivision three of
24 section twenty-nine hundred sixty-three of this article, the system must
25 include a physician or nurse practitioner eligible to provide a concur-
26 ring determination pursuant to such subdivision, or a family member or
27 guardian of the person of a person with a mental illness of the same or
28 similar nature, or (ii) paragraph (c) of subdivision three of section
29 twenty-nine hundred sixty-three of this article, the system must include
30 a physician or nurse practitioner eligible to provide a concurring
31 determination pursuant to such subdivision, or a family member or guard-
32 ian of the person of a person with a developmental disability of the
33 same or similar nature.

34 2. The dispute mediation system shall be authorized to mediate any
35 dispute, including disputes regarding the determination of the patient's
36 capacity, arising under this article between the patient and an attend-
37 ing physician, attending nurse practitioner or the hospital that is
38 caring for the patient and, if the patient is a minor, the patient's
39 parent, or among an attending physician, an attending nurse
40 practitioner, a parent, non-custodial parent, or legal guardian of a
41 minor patient, any person on the surrogate list, and the hospital that
42 is caring for the patient.

43 4. If a dispute between a patient who expressed a decision rejecting
44 cardiopulmonary resuscitation and an attending physician, attending
45 nurse practitioner or the hospital that is caring for the patient is
46 submitted to the dispute mediation system, and either:

47 (a) the dispute mediation system has concluded its efforts to resolve
48 the dispute, or

49 (b) seventy-two hours have elapsed from the time of submission without
50 resolution of the dispute, whichever shall occur first, the attending
51 physician or attending nurse practitioner shall either: (i) promptly
52 issue an order not to resuscitate the patient or issue the order at such
53 time as the conditions, if any, specified in the decision are met, and
54 inform the hospital staff responsible for the patient's care of the
55 order; or (ii) promptly arrange for the transfer of the patient to
56 another physician, nurse practitioner or hospital.

1 § 14. Subdivision 1 of section 2973 of the public health law, as
2 amended by chapter 8 of the laws of 2010, is amended to read as follows:

3 1. The patient, an attending physician, attending nurse practitioner,
4 a parent, non-custodial parent, or legal guardian of a minor patient,
5 any person on the surrogate list, the hospital that is caring for the
6 patient and the facility director, may commence a special proceeding
7 pursuant to article four of the civil practice law and rules, in a court
8 of competent jurisdiction, with respect to any dispute arising under
9 this article, except that the decision of a patient not to consent to
10 issuance of an order not to resuscitate may not be subjected to judicial
11 review. In any proceeding brought pursuant to this subdivision challeng-
12 ing a decision regarding issuance of an order not to resuscitate on the
13 ground that the decision is contrary to the patient's wishes or best
14 interests, the person or entity challenging the decision must show, by
15 clear and convincing evidence, that the decision is contrary to the
16 patient's wishes including consideration of the patient's religious and
17 moral beliefs, or, in the absence of evidence of the patient's wishes,
18 that the decision is contrary to the patient's best interests. In any
19 other proceeding brought pursuant to this subdivision, the court shall
20 make its determination based upon the applicable substantive standards
21 and procedures set forth in this article.

22 § 15. Section 2976 of the public health law, as added by chapter 818
23 of the laws of 1987, is amended to read as follows:

24 § 2976. Judicially approved order not to resuscitate. 1. If no surro-
25 gate is reasonably available, willing to make a decision regarding issu-
26 ance of an order not to resuscitate, and competent to make a decision
27 regarding issuance of an order not to resuscitate on behalf of an adult
28 patient who lacks capacity and who had not previously expressed a deci-
29 sion regarding cardiopulmonary resuscitation pursuant to this article,
30 an attending physician or attending nurse practitioner or hospital may
31 commence a special proceeding pursuant to article four of the civil
32 practice law and rules, in a court of competent jurisdiction, for a
33 judgment directing the physician or nurse practitioner to issue an order
34 not to resuscitate where the patient has a terminal condition, is perma-
35 nently unconscious, or resuscitation would impose an extraordinary
36 burden on the patient in light of the patient's medical condition and
37 the expected outcome of resuscitation for the patient, and issuance of
38 an order not to resuscitate is consistent with the patient's wishes
39 including a consideration of the patient's religious and moral beliefs
40 or, in the absence of evidence of the patient's wishes, the patient's
41 best interests.

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

46 § 16. Subdivisions 2 and 4 of section 2994-a of the public health law,
47 as added by chapter 8 of the laws of 2010, are amended and two new
48 subdivisions 2-a and 22-a are added to read as follows:

49 2. "Attending physician" means a physician, selected by or assigned to
50 a patient pursuant to hospital policy, who has primary responsibility
51 for the treatment and care of the patient. Where more than one physician
52 and/or nurse practitioner shares such responsibility, or where a physi-
53 cian or nurse practitioner is acting on the attending physician's or
54 attending nurse practitioner's behalf, any such physician or nurse prac-
55 titioner may act as an attending physician or attending nurse practi-
56 tioner pursuant to this article.

1 2-a. "Attending nurse practitioner" means a nurse practitioner,
2 selected by or assigned to a patient pursuant to hospital policy, who
3 has primary responsibility for the treatment and care of the patient.
4 Where more than one physician and/or nurse practitioner shares such
5 responsibility, or where a physician or nurse practitioner is acting on
6 the attending physician's or attending nurse practitioner's behalf, any
7 such physician or nurse practitioner may act as an attending physician
8 or attending nurse practitioner pursuant to this article.

9 4. "Close friend" means any person, eighteen years of age or older,
10 who is a close friend of the patient, or a relative of the patient
11 (other than a spouse, adult child, parent, brother or sister), who has
12 maintained such regular contact with the patient as to be familiar with
13 the patient's activities, health, and religious or moral beliefs, and
14 who presents a signed statement to that effect to the attending physi-
15 cian or attending nurse practitioner.

16 22-a. "Nurse practitioner" means a nurse practitioner certified pursu-
17 ant to section sixty-nine hundred ten of the education law who is prac-
18 ticing in accordance with subdivision three of section sixty-nine
19 hundred two of the education law.

20 § 17. Subdivisions 2 and 3 of section 2994-b of the public health law,
21 as added by chapter 8 of the laws of 2010, are amended to read as
22 follows:

23 2. Prior to seeking or relying upon a health care decision by a surro-
24 gate for a patient under this article, the attending physician or
25 attending nurse practitioner shall make reasonable efforts to determine
26 whether the patient has a health care agent appointed pursuant to arti-
27 cle twenty-nine-C of this chapter. If so, health care decisions for the
28 patient shall be governed by such article, and shall have priority over
29 decisions by any other person except the patient or as otherwise
30 provided in the health care proxy.

31 3. Prior to seeking or relying upon a health care decision by a surro-
32 gate for a patient under this article, if the attending physician or
33 attending nurse practitioner has reason to believe that the patient has
34 a history of receiving services for mental retardation or a develop-
35 mental disability; it reasonably appears to the attending physician or
36 attending nurse practitioner that the patient has mental retardation or
37 a developmental disability; or the attending physician or attending
38 nurse practitioner has reason to believe that the patient has been
39 transferred from a mental hygiene facility operated or licensed by the
40 office of mental health, then such physician or nurse practitioner shall
41 make reasonable efforts to determine whether paragraphs (a), (b) or (c)
42 of this subdivision are applicable:

43 (a) If the patient has a guardian appointed by a court pursuant to
44 article seventeen-A of the surrogate's court procedure act, health care
45 decisions for the patient shall be governed by section seventeen hundred
46 fifty-b of the surrogate's court ~~proceedure~~ procedure act and not by
47 this article.

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

55 (c) If a health care decision for a patient cannot be made under para-
56 graphs (a) or (b) of this subdivision, but consent for the decision may

1 be provided pursuant to the mental hygiene law or regulations of the
2 office of mental health or the office [~~of mental retardation and~~] for
3 people with developmental disabilities, then the decision shall be
4 governed by such statute or regulations and not by this article.

5 § 18. Subdivisions 2, 3 and 7 of section 2994-c of the public health
6 law, as added by chapter 8 of the laws of 2010, paragraph (b) of subdivi-
7 sion 3 as amended by chapter 167 of the laws of 2011 and subparagraph
8 (ii) of paragraph (c) of subdivision 3 as amended by section 8 of part J
9 of chapter 56 of the laws of 2012, are amended to read as follows:

10 2. Initial determination by attending physician or attending nurse
11 practitioner. An attending physician or attending nurse practitioner
12 shall make an initial determination that an adult patient lacks deci-
13 sion-making capacity to a reasonable degree of medical certainty. Such
14 determination shall include an assessment of the cause and extent of the
15 patient's incapacity and the likelihood that the patient will regain
16 decision-making capacity.

17 3. Concurring determinations. (a) An initial determination that a
18 patient lacks decision-making capacity shall be subject to a concurring
19 determination, independently made, where required by this subdivision. A
20 concurring determination shall include an assessment of the cause and
21 extent of the patient's incapacity and the likelihood that the patient
22 will regain decision-making capacity, and shall be included in the
23 patient's medical record. Hospitals shall adopt written policies identi-
24 fying the training and credentials of health or social services practi-
25 tioners qualified to provide concurring determinations of incapacity.

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

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

35 (iii) With respect to decisions regarding hospice care for a patient
36 in a general hospital or residential health care facility, the health or
37 social services practitioner must be employed by or otherwise formally
38 affiliated with the general hospital or residential health care facili-
39 ty.

40 (c) (i) If the attending physician or attending nurse practitioner
41 makes an initial determination that a patient lacks decision-making
42 capacity because of mental illness, either such physician must have the
43 following qualifications, or another physician with the following quali-
44 fications must independently determine whether the patient lacks deci-
45 sion-making capacity: a physician licensed to practice medicine in New
46 York state, who is a diplomate or eligible to be certified by the Ameri-
47 can Board of Psychiatry and Neurology or who is certified by the Ameri-
48 can Osteopathic Board of Neurology and Psychiatry or is eligible to be
49 certified by that board. A record of such consultation shall be included
50 in the patient's medical record.

51 (ii) If the attending physician or attending nurse practitioner makes
52 an initial determination that a patient lacks decision-making capacity
53 because of a developmental disability, either such physician or nurse
54 practitioner must have the following qualifications, or another profes-
55 sional with the following qualifications must independently determine
56 whether the patient lacks decision-making capacity: a physician or clin-

1 ical psychologist who either is employed by a developmental disabilities
2 services office named in section 13.17 of the mental hygiene law, or who
3 has been employed for a minimum of two years to render care and service
4 in a facility operated or licensed by the office for people with devel-
5 opmental disabilities, or has been approved by the commissioner of
6 developmental disabilities in accordance with regulations promulgated by
7 such commissioner. Such regulations shall require that a physician or
8 clinical psychologist possess specialized training or three years' expe-
9 rience in treating developmental disabilities. A record of such consul-
10 tation shall be included in the patient's medical record.

11 (d) If an attending physician or attending nurse practitioner has
12 determined that the patient lacks decision-making capacity and if the
13 health or social services practitioner consulted for a concurring deter-
14 mination disagrees with the attending physician's or the attending nurse
15 practitioner's determination, the matter shall be referred to the ethics
16 review committee if it cannot otherwise be resolved.

17 7. Confirmation of continued lack of decision-making capacity. An
18 attending physician or attending nurse practitioner shall confirm the
19 adult patient's continued lack of decision-making capacity before
20 complying with health care decisions made pursuant to this article,
21 other than those decisions made at or about the time of the initial
22 determination. A concurring determination of the patient's continued
23 lack of decision-making capacity shall be required if the subsequent
24 health care decision concerns the withholding or withdrawal of life-sus-
25 taining treatment. Health care providers shall not be required to inform
26 the patient or surrogate of the confirmation.

27 § 19. Subdivisions 2, 3 and 5 of section 2994-d of the public health
28 law, as added by chapter 8 of the laws of 2010, the subdivision heading
29 and the opening paragraph of subdivision 5 as amended by chapter 167 of
30 the laws of 2011, are amended to read as follows:

31 2. Restrictions on who may be a surrogate. An operator, administrator,
32 or employee of a hospital or a mental hygiene facility from which the
33 patient was transferred, or a physician or nurse practitioner who has
34 privileges at the hospital or a health care provider under contract with
35 the hospital may not serve as the surrogate for any adult who is a
36 patient of such hospital, unless such individual is related to the
37 patient by blood, marriage, domestic partnership, or adoption, or is a
38 close friend of the patient whose friendship with the patient preceded
39 the patient's admission to the facility. If a physician or nurse practi-
40 tioner serves as surrogate, the physician or nurse practitioner shall
41 not act as the patient's attending physician or attending nurse practi-
42 tioner after his or her authority as surrogate begins.

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

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

48 (ii) Nothing in this article shall obligate health care providers to
49 seek the consent of a surrogate if an adult patient has already made a
50 decision about the proposed health care, expressed orally or in writing
51 or, with respect to a decision to withdraw or withhold life-sustaining
52 treatment expressed either orally during hospitalization in the presence
53 of two witnesses eighteen years of age or older, at least one of whom is
54 a health or social services practitioner affiliated with the hospital,
55 or in writing. If an attending physician or attending nurse practitioner
56 relies on the patient's prior decision, the physician or nurse practi-

1 tioner shall record the prior decision in the patient's medical record.
2 If a surrogate has already been designated for the patient, the attend-
3 ing physician or attending nurse practitioner shall make reasonable
4 efforts to notify the surrogate prior to implementing the decision;
5 provided that in the case of a decision to withdraw or withhold life-
6 sustaining treatment, the attending physician or attending nurse practi-
7 tioner shall make diligent efforts to notify the surrogate and, if
8 unable to notify the surrogate, shall document the efforts that were
9 made to do so.

10 (b) Commencement of surrogate's authority. The surrogate's authority
11 shall commence upon a determination, made pursuant to section twenty-
12 nine hundred ninety-four-c of this article, that the adult patient lacks
13 decision-making capacity and upon identification of a surrogate pursuant
14 to subdivision one of this section. In the event an attending physician
15 or nurse practitioner determines that the patient has regained deci-
16 sion-making capacity, the authority of the surrogate shall cease.

17 (c) Right and duty to be informed. Notwithstanding any law to the
18 contrary, the surrogate shall have the right to receive medical informa-
19 tion and medical records necessary to make informed decisions about the
20 patient's health care. Health care providers shall provide and the
21 surrogate shall seek information necessary to make an informed decision,
22 including information about the patient's diagnosis, prognosis, the
23 nature and consequences of proposed health care, and the benefits and
24 risks of and alternative to proposed health care.

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

32 (a)(i) Treatment would be an extraordinary burden to the patient and
33 an attending physician or attending nurse practitioner determines, with
34 the independent concurrence of another physician or nurse practitioner,
35 that, to a reasonable degree of medical certainty and in accord with
36 accepted medical standards, (A) the patient has an illness or injury
37 which can be expected to cause death within six months, whether or not
38 treatment is provided; or (B) the patient is permanently unconscious; or

39 (ii) The provision of treatment would involve such pain, suffering or
40 other burden that it would reasonably be deemed inhumane or extraor-
41 dinarily burdensome under the circumstances and the patient has an irre-
42 versible or incurable condition, as determined by an attending physician
43 or attending nurse practitioner with the independent concurrence of
44 another physician or nurse practitioner to a reasonable degree of
45 medical certainty and in accord with accepted medical standards.

46 (b) In a residential health care facility, a surrogate shall have the
47 authority to refuse life-sustaining treatment under subparagraph (ii) of
48 paragraph (a) of this subdivision only if the ethics review committee,
49 including at least one physician or nurse practitioner who is not
50 directly responsible for the patient's care, or a court of competent
51 jurisdiction, reviews the decision and determines that it meets the
52 standards set forth in this article. This requirement shall not apply to
53 a decision to withhold cardiopulmonary resuscitation.

54 (c) In a general hospital, if the attending physician or attending
55 nurse practitioner objects to a surrogate's decision, under subparagraph
56 (ii) of paragraph (a) of this subdivision, to withdraw or withhold

1 nutrition and hydration provided by means of medical treatment, the
2 decision shall not be implemented until the ethics review committee,
3 including at least one physician or nurse practitioner who is not
4 directly responsible for the patient's care, or a court of competent
5 jurisdiction, reviews the decision and determines that it meets the
6 standards set forth in this subdivision and subdivision four of this
7 section.

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

11 (e) Expression of decisions. The surrogate shall express a decision to
12 withdraw or withhold life-sustaining treatment either orally to an
13 attending physician or attending nurse practitioner or in writing.

14 § 20. Subdivisions 2 and 3 of section 2994-e of the public health law,
15 as added by chapter 8 of the laws of 2010, are amended to read as
16 follows:

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

23 (b) An attending physician or attending nurse practitioner, in consul-
24 tation with a minor's parent or guardian, shall determine whether a
25 minor patient has decision-making capacity for a decision to withhold or
26 withdraw life-sustaining treatment. If the minor has such capacity, a
27 parent's or guardian's decision to withhold or withdraw life-sustaining
28 treatment for the minor may not be implemented without the minor's
29 consent.

30 (c) Where a parent or guardian of a minor patient has made a decision
31 to withhold or withdraw life-sustaining treatment and an attending
32 physician or attending nurse practitioner has reason to believe that the
33 minor patient has a parent or guardian who has not been informed of the
34 decision, including a non-custodial parent or guardian, an attending
35 physician, attending nurse practitioner or someone acting on his or her
36 behalf, shall make reasonable efforts to determine if the uninformed
37 parent or guardian has maintained substantial and continuous contact
38 with the minor and, if so, shall make diligent efforts to notify that
39 parent or guardian prior to implementing the decision.

40 3. Decision-making standards and procedures for emancipated minor
41 patient. (a) If an attending physician or attending nurse practitioner
42 determines that a patient is an emancipated minor patient with deci-
43 sion-making capacity, the patient shall have the authority to decide
44 about life-sustaining treatment. Such authority shall include a decision
45 to withhold or withdraw life-sustaining treatment if an attending physi-
46 cian or attending nurse practitioner and the ethics review committee
47 determine that the decision accords with the standards for surrogate
48 decisions for adults, and the ethics review committee approves the deci-
49 sion.

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

54 § 21. Section 2994-f of the public health law, as added by chapter 8
55 of the laws of 2010, is amended to read as follows:

1 § 2994-f. Obligations of attending physician or attending nurse prac-
2 titioner. 1. An attending physician or attending nurse practitioner
3 informed of a decision to withdraw or withhold life-sustaining treatment
4 made pursuant to the standards of this article shall record the decision
5 in the patient's medical record, review the medical basis for the deci-
6 sion, and shall either: (a) implement the decision, or (b) promptly make
7 his or her objection to the decision and the reasons for the objection
8 known to the decision-maker, and either make all reasonable efforts to
9 arrange for the transfer of the patient to another physician or nurse
10 practitioner, if necessary, or promptly refer the matter to the ethics
11 review committee.

12 2. If an attending physician or attending nurse practitioner has actu-
13 al notice of the following objections or disagreements, he or she shall
14 promptly refer the matter to the ethics review committee if the
15 objection or disagreement cannot otherwise be resolved:

16 (a) A health or social services practitioner consulted for a concur-
17 ring determination that an adult patient lacks decision-making capacity
18 disagrees with the attending physician's or attending nurse practition-
19 er's determination; or

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

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

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

27 (e) A minor patient refuses life-sustaining treatment, and the minor's
28 parent or guardian wishes the treatment to be provided, or the minor
29 patient objects to an attending physician's or attending nurse practi-
30 tioner's determination about decision-making capacity or recommendation
31 about life-sustaining treatment.

32 3. Notwithstanding the provisions of this section or subdivision one
33 of section twenty-nine hundred ninety-four-q of this article, if a
34 surrogate directs the provision of life-sustaining treatment, the denial
35 of which in reasonable medical judgment would be likely to result in the
36 death of the patient, a hospital or individual health care provider that
37 does not wish to provide such treatment shall nonetheless comply with
38 the surrogate's decision pending either transfer of the patient to a
39 willing hospital or individual health care provider, or judicial review
40 in accordance with section twenty-nine hundred ninety-four-r of this
41 article.

42 § 22. Subdivisions 3,4,5, 5-a and 6 of section 2994-g of the public
43 health law, subdivisions 3, 4, 5 and 6 as added by chapter 8 of the laws
44 of 2010, subparagraph (iii) of paragraph (b) of subdivision 4 as amended
45 by chapter 167 of the laws of 2011 and subdivision 5-a as added by chap-
46 ter 107 of the laws of 2015, are amended to read as follows:

47 3. Routine medical treatment. (a) For purposes of this subdivision,
48 "routine medical treatment" means any treatment, service, or procedure
49 to diagnose or treat an individual's physical or mental condition, such
50 as the administration of medication, the extraction of bodily fluids for
51 analysis, or dental care performed with a local anesthetic, for which
52 health care providers ordinarily do not seek specific consent from the
53 patient or authorized representative. It shall not include the long-term
54 provision of treatment such as ventilator support or a nasogastric tube
55 but shall include such treatment when provided as part of post-operative

1 care or in response to an acute illness and recovery is reasonably
2 expected within one month or less.

3 (b) An attending physician or attending nurse practitioner shall be
4 authorized to decide about routine medical treatment for an adult
5 patient who has been determined to lack decision-making capacity pursu-
6 ant to section twenty-nine hundred ninety-four-c of this article. Noth-
7 ing in this subdivision shall require health care providers to obtain
8 specific consent for treatment where specific consent is not otherwise
9 required by law.

10 4. Major medical treatment. (a) For purposes of this subdivision,
11 "major medical treatment" means any treatment, service or procedure to
12 diagnose or treat an individual's physical or mental condition: (i)
13 where general anesthetic is used; or (ii) which involves any significant
14 risk; or (iii) which involves any significant invasion of bodily integ-
15 rity requiring an incision, producing substantial pain, discomfort,
16 debilitation or having a significant recovery period; or (iv) which
17 involves the use of physical restraints, as specified in regulations
18 promulgated by the commissioner, except in an emergency; or (v) which
19 involves the use of psychoactive medications, except when provided as
20 part of post-operative care or in response to an acute illness and
21 treatment is reasonably expected to be administered over a period of
22 forty-eight hours or less, or when provided in an emergency.

23 (b) A decision to provide major medical treatment, made in accordance
24 with the following requirements, shall be authorized for an adult
25 patient who has been determined to lack decision-making capacity pursu-
26 ant to section twenty-nine hundred ninety-four-c of this article.

27 (i) An attending physician or attending nurse practitioner shall make
28 a recommendation in consultation with hospital staff directly responsi-
29 ble for the patient's care.

30 (ii) In a general hospital, at least one other physician or nurse
31 practitioner designated by the hospital must independently determine
32 that he or she concurs that the recommendation is appropriate.

33 (iii) In a residential health care facility, and for a hospice patient
34 not in a general hospital, the medical director of the facility or
35 hospice, or a physician or nurse practitioner designated by the medical
36 director, must independently determine that he or she concurs that the
37 recommendation is appropriate; provided that if the medical director is
38 the patient's attending physician or attending nurse practitioner, a
39 different physician or nurse practitioner designated by the residential
40 health care facility or hospice must make this independent determi-
41 nation. Any health or social services practitioner employed by or other-
42 wise formally affiliated with the facility or hospice may provide a
43 second opinion for decisions about physical restraints made pursuant to
44 this subdivision.

45 5. Decisions to withhold or withdraw life-sustaining treatment. (a) A
46 court of competent jurisdiction may make a decision to withhold or with-
47 draw life-sustaining treatment for an adult patient who has been deter-
48 mined to lack decision-making capacity pursuant to section twenty-nine
49 hundred ninety-four-c of this article if the court finds that the deci-
50 sion accords with standards for decisions for adults set forth in subdi-
51 visions four and five of section twenty-nine hundred ninety-four-d of
52 this article.

53 (b) If the attending physician or attending nurse practitioner, with
54 independent concurrence of a second physician or nurse practitioner
55 designated by the hospital, determines to a reasonable degree of medical
56 certainty that:

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

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

10 5-a. Decisions regarding hospice care. An attending physician or
11 attending nurse practitioner shall be authorized to make decisions
12 regarding hospice care and execute appropriate documents for such deci-
13 sions (including a hospice election form) for an adult patient under
14 this section who is hospice eligible in accordance with the following
15 requirements.

16 (a) The attending physician or attending nurse practitioner shall make
17 decisions under this section in consultation with staff directly respon-
18 sible for the patient's care, and shall base his or her decisions on the
19 standards for surrogate decisions set forth in subdivisions four and
20 five of section twenty-nine hundred ninety-four-d of this article;

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

22 (i) in a general hospital, at least one other physician or nurse prac-
23 titioner designated by the hospital must independently determine that he
24 or she concurs that the recommendation is consistent with such standards
25 for surrogate decisions;

26 (ii) in a residential health care facility, the medical director of
27 the facility, or a physician or nurse practitioner designated by the
28 medical director, must independently determine that he or she concurs
29 that the recommendation is consistent with such standards for surrogate
30 decisions; provided that if the medical director is the patient's
31 attending physician or attending nurse practitioner, a different physi-
32 cian or nurse practitioner designated by the residential health care
33 facility must make this independent determination; or

34 (iii) in settings other than a general hospital or residential health
35 care facility, the medical director of the hospice, or a physician
36 designated by the medical director, must independently determine that he
37 or she concurs that the recommendation is medically appropriate and
38 consistent with such standards for surrogate decisions; provided that if
39 the medical director is the patient's attending physician or attending
40 nurse practitioner, a different physician or nurse practitioner desig-
41 nated by the hospice must make this independent determination; and

42 (c) The ethics review committee of the general hospital, residential
43 health care facility or hospice, as applicable, including at least one
44 physician or nurse practitioner who is not the patient's attending
45 physician or attending nurse practitioner, or a court of competent
46 jurisdiction, must review the decision and determine that it is consist-
47 ent with such standards for surrogate decisions.

48 6. Physician or nurse practitioner objection. If a physician or nurse
49 practitioner consulted for a concurring opinion objects to an attending
50 physician's or attending nurse practitioner's recommendation or determi-
51 nation made pursuant to this section, or a member of the hospital staff
52 directly responsible for the patient's care objects to an attending
53 physician's or attending nurse practitioner's recommendation about major
54 medical treatment or treatment without medical benefit, the matter shall
55 be referred to the ethics review committee if it cannot be otherwise
56 resolved.

1 § 23. Section 2994-j of the public health law, as added by chapter 8
2 of the laws of 2010, is amended read as follows:

3 § 2994-j. Revocation of consent. 1. A patient, surrogate, or parent or
4 guardian of a minor patient may at any time revoke his or her consent to
5 withhold or withdraw life-sustaining treatment by informing an attending
6 physician, attending nurse practitioner or a member of the medical or
7 nursing staff of the revocation.

8 2. An attending physician or attending nurse practitioner informed of
9 a revocation of consent made pursuant to this section shall immediately:

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

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

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

15 3. Any member of the medical or nursing staff, other than a nurse
16 practitioner, informed of a revocation made pursuant to this section
17 shall immediately notify an attending physician or attending nurse prac-
18 titioner of the revocation.

19 § 24. The opening paragraph of subdivision 2 of section 2994-k of the
20 public health law, as added by chapter 8 of the laws of 2010, is amended
21 to read as follows:

22 If a decision to withhold or withdraw life-sustaining treatment has
23 been made pursuant to this article, and an attending physician or
24 attending nurse practitioner determines at any time that the decision is
25 no longer appropriate or authorized because the patient has regained
26 decision-making capacity or because the patient's condition has other-
27 wise improved, the physician or nurse practitioner shall immediately:

28 § 25. Section 2994-l of the public health law, as added by chapter 8
29 of the laws of 2010, is amended to read as follows:

30 § 2994-l. Interinstitutional transfers. If a patient with an order to
31 withhold or withdraw life-sustaining treatment is transferred from a
32 mental hygiene facility to a hospital or from a hospital to a different
33 hospital, any such order or plan shall remain effective until an attend-
34 ing physician or attending nurse practitioner first examines the trans-
35 ferred patient, whereupon an attending physician or attending nurse
36 practitioner must either:

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

40 2. Cancel such order, if the attending physician or attending nurse
41 practitioner determines that the order is no longer appropriate or
42 authorized. Before canceling the order the attending physician or
43 attending nurse practitioner shall make reasonable efforts to notify the
44 person who made the decision to withhold or withdraw treatment and the
45 hospital staff directly responsible for the patient's care of any such
46 cancellation. If such notice cannot reasonably be made prior to cancel-
47 ling the order or plan, the attending physician or attending nurse prac-
48 titioner shall make such notice as soon as reasonably practicable after
49 cancellation.

50 § 26. Subdivisions 3 and 4 of section 2994-m of the public health law,
51 as added by chapter 8 of the laws of 2010 and paragraph (c) of subdivi-
52 sion 4 as added by chapter 167 of the laws of 2011, are amended to read
53 as follows:

54 3. Committee membership. The membership of ethics review committees
55 must be interdisciplinary and must include at least five members who
56 have demonstrated an interest in or commitment to patient's rights or to

1 the medical, public health, or social needs of those who are ill. At
2 least three ethics review committee members must be health or social
3 services practitioners, at least one of whom must be a registered nurse
4 and one of whom must be a physician or nurse practitioner. At least one
5 member must be a person without any governance, employment or contractu-
6 al relationship with the hospital. In a residential health care facility
7 the facility must offer the residents' council of the facility (or of
8 another facility that participates in the committee) the opportunity to
9 appoint up to two persons to the ethics review committee, none of whom
10 may be a resident of or a family member of a resident of such facility,
11 and both of whom shall be persons who have expertise in or a demon-
12 strated commitment to patient rights or to the care and treatment of the
13 elderly or nursing home residents through professional or community
14 activities, other than activities performed as a health care provider.

15 4. Procedures for ethics review committee. (a) These procedures are
16 required only when: (i) the ethics review committee is convened to
17 review a decision by a surrogate to withhold or withdraw life-sustaining
18 treatment for: (A) a patient in a residential health care facility
19 pursuant to paragraph (b) of subdivision five of section twenty-nine
20 hundred ninety-four-d of this article; (B) a patient in a general hospi-
21 tal pursuant to paragraph (c) of subdivision five of section twenty-nine
22 hundred ninety-four-d of this article; or (C) an emancipated minor
23 patient pursuant to subdivision three of section twenty-nine hundred
24 ninety-four-e of this article; or (ii) when a person connected with the
25 case requests the ethics review committee to provide assistance in
26 resolving a dispute about proposed care. Nothing in this section shall
27 bar health care providers from first striving to resolve disputes
28 through less formal means, including the informal solicitation of
29 ethical advice from any source.

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

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

41 (iii) The ethics review committee shall promptly provide the patient,
42 where there is any indication of the patient's ability to comprehend the
43 information, the surrogate, other persons on the surrogate list directly
44 involved in the decision or dispute regarding the patient's care, any
45 parent or guardian of a minor patient directly involved in the decision
46 or dispute regarding the minor patient's care, an attending physician,
47 an attending nurse practitioner, the hospital, and other persons the
48 committee deems appropriate, with the following:

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

53 (B) the committee's response to the case, including a written state-
54 ment of the reasons for approving or disapproving the withholding or
55 withdrawal of life-sustaining treatment for decisions considered pursu-
56 ant to subparagraph (ii) of paragraph (a) of subdivision five of section

1 twenty-nine hundred ninety-four-d of this article. The committee's
2 response to the case shall be included in the patient's medical record.

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

8 (c) When an ethics review committee is convened to review decisions
9 regarding hospice care for a patient in a general hospital or residen-
10 tial health care facility, the responsibilities of this section shall be
11 carried out by the ethics review committee of the general hospital or
12 residential health care facility, provided that such committee shall
13 invite a representative from hospice to participate.

14 § 27. Paragraph (b) of subdivision 4 of section 2994-r of the public
15 health law, as added by chapter 8 of the laws of 2010, is amended to
16 read as follows:

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

21 (i) the hospital administrator;

22 (ii) an attending physician or attending nurse practitioner;

23 (iii) the local commissioner of social services or the local commis-
24 sioner of health, authorized to make medical treatment decisions for the
25 minor pursuant to section three hundred eighty-three-b of the social
26 services law; or

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

29 § 28. Subdivision 1 of section 2994-s of the public health law, as
30 added by chapter 8 of the laws of 2010, is amended to read as follows:

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

37 (a) when a hospital [~~or~~], physician or nurse practitioner exercises
38 the rights granted by section twenty-nine hundred ninety-four-n of this
39 article, provided that the physician, nurse practitioner or hospital
40 promptly fulfills the obligations set forth in section twenty-nine
41 hundred ninety-four-n of this article;

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

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

47 (d) if the physician, nurse practitioner or hospital prevails in any
48 litigation concerning the surrogate's decision to refuse the treatment,
49 services or procedure. Nothing in this section shall determine or
50 affect how disputes among individuals on the surrogate list are
51 resolved.

52 § 29. Subdivision 2 of section 2994-aa of the public health law, as
53 added by chapter 8 of the laws of 2010, is amended and two new subdivi-
54 sions 2-a and 13-a are added to read as follows:

55 2. "Attending physician" means the physician who has primary responsi-
56 bility for the treatment and care of the patient. Where more than one

1 physician or nurse practitioner shares such responsibility, any such
2 physician or nurse practitioner may act as the attending physician or
3 attending nurse practitioner pursuant to this article.

4 2-a. "Attending nurse practitioner" means the nurse practitioner
5 selected by or assigned to a patient in a hospital who has primary
6 responsibility for the treatment and care of the patient. Where more
7 than one physician and/or nurse practitioner shares such responsibility,
8 any such physician or nurse practitioner may act as the attending physi-
9 cian or attending nurse practitioner pursuant to this article.

10 13-a. "Nurse practitioner" means a nurse practitioner certified pursu-
11 ant to section sixty-nine hundred ten of the education law who is prac-
12 ticing in accordance with subdivision three of section sixty-nine
13 hundred two of the education law.

14 § 30. Section 2994-cc of the public health law, as added by chapter 8
15 of the laws of 2010, subdivision 4 as amended by section 131 of subpart
16 B of part C of chapter 62 of the laws of 2011, is amended to read as
17 follows:

18 § 2994-cc. Consent to a nonhospital order not to resuscitate. 1. An
19 adult with decision-making capacity, a health care agent, or a surrogate
20 may consent to a nonhospital order not to resuscitate orally to the
21 attending physician or attending nurse practitioner or in writing. If a
22 patient consents to a nonhospital order not to resuscitate while in a
23 correctional facility, notice of the patient's consent shall be given to
24 the facility director and reasonable efforts shall be made to notify an
25 individual designated by the patient to receive such notice prior to the
26 issuance of the nonhospital order not to resuscitate. Notification to
27 the facility director or the individual designated by the patient shall
28 not delay issuance of a nonhospital order not to resuscitate.

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

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

37 4. (a) When the concurrence of a second physician or nurse practition-
38 er is sought to fulfill the requirements for the issuance of a nonhospi-
39 tal order not to resuscitate for patients in a correctional facility,
40 such second physician or nurse practitioner shall be selected by the
41 chief medical officer of the department of corrections and community
42 supervision or his or her designee.

43 (b) When the concurrence of a second physician or nurse practitioner
44 is sought to fulfill the requirements for the issuance of a nonhospital
45 order not to resuscitate for hospice and home care patients, such second
46 physician or nurse practitioner shall be selected by the hospice medical
47 director or hospice nurse coordinator designated by the medical director
48 or by the home care services agency director of patient care services,
49 as appropriate to the patient.

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

53 § 31. Section 2994-dd of the public health law, as added by chapter 8
54 of the laws of 2010, subdivision 6 as amended by section 10 of part J of
55 chapter 56 of the laws of 2012, is amended to read as follows:

1 § 2994-dd. Managing a nonhospital order not to resuscitate. 1. The
2 attending physician or attending nurse practitioner shall record the
3 issuance of a nonhospital order not to resuscitate in the patient's
4 medical record.

5 2. A nonhospital order not to resuscitate shall be issued upon a stan-
6 dard form prescribed by the commissioner. The commissioner shall also
7 develop a standard bracelet that may be worn by a patient with a nonhos-
8 pital order not to resuscitate to identify that status; provided, howev-
9 er, that no person may require a patient to wear such a bracelet and
10 that no person may require a patient to wear such a bracelet as a condi-
11 tion for honoring a nonhospital order not to resuscitate or for provid-
12 ing health care services.

13 3. An attending physician or attending nurse practitioner who has
14 issued a nonhospital order not to resuscitate, and who transfers care of
15 the patient to another physician or nurse practitioner, shall inform the
16 physician or nurse practitioner of the order.

17 4. For each patient for whom a nonhospital order not to resuscitate
18 has been issued, the attending physician or attending nurse practitioner
19 shall review whether the order is still appropriate in light of the
20 patient's condition each time he or she examines the patient, whether in
21 the hospital or elsewhere, but at least every ninety days, provided that
22 the review need not occur more than once every seven days. The attending
23 physician or attending nurse practitioner shall record the review in the
24 patient's medical record provided, however, that a registered nurse,
25 other than the attending nurse practitioner, who provides direct care to
26 the patient may record the review in the medical record at the direction
27 of the physician. In such case, the attending physician or attending
28 nurse practitioner shall include a confirmation of the review in the
29 patient's medical record within fourteen days of such review. Failure
30 to comply with this subdivision shall not render a nonhospital order not
31 to resuscitate ineffective.

32 5. A person who has consented to a nonhospital order not to resusci-
33 tate may at any time revoke his or her consent to the order by any act
34 evidencing a specific intent to revoke such consent. Any health care
35 professional, other than the attending physician or attending nurse
36 practitioner, informed of a revocation of consent to a nonhospital order
37 not to resuscitate shall notify the attending physician or attending
38 nurse practitioner of the revocation. An attending physician or attend-
39 ing nurse practitioner who is informed that a nonhospital order not to
40 resuscitate has been revoked shall record the revocation in the
41 patient's medical record, cancel the order and make diligent efforts to
42 retrieve the form issuing the order, and the standard bracelet, if any.

43 6. The commissioner may authorize the use of one or more alternative
44 forms for issuing a nonhospital order not to resuscitate (in place of
45 the standard form prescribed by the commissioner under subdivision two
46 of this section). Such alternative form or forms may also be used to
47 issue a non-hospital do not intubate order. Any such alternative forms
48 intended for use for persons with developmental disabilities or persons
49 with mental illness who are incapable of making their own health care
50 decisions or who have a guardian of the person appointed pursuant to
51 article eighty-one of the mental hygiene law or article seventeen-A of
52 the surrogate's court procedure act must also be approved by the commis-
53 sioner of developmental disabilities or the commissioner of mental
54 health, as appropriate. An alternative form under this subdivision shall
55 otherwise conform with applicable federal and state law. This subdivi-
56 sion does not limit, restrict or impair the use of an alternative form

1 for issuing an order not to resuscitate in a general hospital or resi-
2 dential health care facility under article twenty-eight of this chapter
3 or a hospital under subdivision ten of section 1.03 of the mental
4 hygiene law.

5 § 32. Subdivision 2 of section 2994-ee of the public health law, as
6 added by chapter 8 of the laws of 2010, is amended to read as follows:

7 2. Hospital emergency services physicians and hospital emergency
8 services nurse practitioners may direct that the order be disregarded if
9 other significant and exceptional medical circumstances warrant disre-
10 garding the order.

11 § 33. This act shall take effect on the one hundred eightieth day
12 after it shall have become a law; provided that, effective immediately,
13 any rules and regulations necessary to implement the provisions of this
14 act on its effective date are authorized and directed to be amended,
15 repealed and/or promulgated on or before such date.