

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.

LBD15341-03-8

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.