

# 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.

LBD02551-01-7

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 itioner'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 [~~procedure~~] 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.