

# STATE OF NEW YORK

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7277--A

Cal. No. 245

2017-2018 Regular Sessions

## IN ASSEMBLY

April 17, 2017

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Introduced by M. of A. GOTTFRIED, D'URSO, LUPARDO, McDONALD, LIFTON, HUNTER -- read once and referred to the Committee on Health -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law, 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

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

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1 practitioner may act as the attending physician or attending nurse prac-  
2 itioner pursuant to this article.

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

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

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

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

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

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

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

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

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

55 2. A determination that an adult patient lacks capacity shall be made  
56 by the attending physician or attending nurse practitioner to a reason-

1 able degree of medical certainty. The determination shall be made in  
2 writing and shall contain such attending physician's or attending nurse  
3 practitioner's opinion regarding the cause and nature of the patient's  
4 incapacity as well as its extent and probable duration. The determi-  
5 nation shall be included in the patient's medical chart.

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

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

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

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

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

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

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

55 (b) Prior to or during hospitalization, an adult with capacity may  
56 express a decision consenting to an order not to resuscitate in writing,

1 dated and signed in the presence of at least two witnesses eighteen  
2 years of age or older who shall sign the decision.

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

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

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

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

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

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

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

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

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

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

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

51 4. (a) A surrogate shall express a decision consenting to an order not  
52 to resuscitate either (i) in writing, dated, and signed in the presence  
53 of one witness eighteen years of age or older who shall sign the deci-  
54 sion, or (ii) orally, to two persons eighteen years of age or older, one  
55 of whom is a physician or nurse practitioner affiliated with the hospi-

tal in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

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

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

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

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

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

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

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

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

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

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



(b) Where the attending physician or attending nurse practitioner has reason to believe that there is another parent or a non-custodial parent who has not been informed of a decision to issue an order not to resuscitate the minor, the attending physician or attending nurse practitioner, or someone acting on behalf of the attending physician or attending nurse practitioner, shall make reasonable efforts to determine if the uninformed parent or non-custodial parent has maintained substantial and continuous contact with the minor and, if so, shall make diligent efforts to notify that parent or non-custodial parent of the decision prior to issuing the order.

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

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

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

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

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

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

2. Any surrogate, parent, or legal guardian may at any time revoke his or her consent to an order not to resuscitate a patient by (a) notifying a physician or member of the nursing staff of the revocation of consent

1 in writing, dated and signed, or (b) orally notifying the attending  
2 physician or attending nurse practitioner in the presence of a witness  
3 eighteen years of age or older.

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

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

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

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

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

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

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

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

1 If a patient for whom an order not to resuscitate has been issued is  
2 transferred from a hospital to a different hospital the order shall  
3 remain effective, unless revoked pursuant to this article, until the  
4 attending physician or attending nurse practitioner first examines the  
5 transferred patient, whereupon the attending physician or attending  
6 nurse practitioner must either:

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

12 § 13. Subdivisions 1, 2 and 4 of section 2972 of the public health  
13 law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987,  
14 paragraph (b) of subdivision 1 as amended by chapter 370 of the laws of  
15 1991 and subdivision 2 as amended by chapter 8 of the laws of 2010, are  
16 amended to read as follows:

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

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

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

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

49 (a) the dispute mediation system has concluded its efforts to resolve  
50 the dispute, or

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



1 order; or (ii) promptly arrange for the transfer of the patient to  
2 another physician, nurse practitioner or hospital.

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

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

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

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

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

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

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

1 itioner may act as an attending physician or attending nurse practi-  
2 tioner pursuant to this article.

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

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

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

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

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

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

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

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

(c) If a health care decision for a patient cannot be made under paragraphs (a) or (b) of this subdivision, but consent for the decision may be provided pursuant to the mental hygiene law or regulations of the office of mental health or the office [~~of mental retardation and~~] for people with developmental disabilities, then the decision shall be governed by such statute or regulations and not by this article.

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

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

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

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

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

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

(c) (i) If the attending physician or attending nurse practitioner makes an initial determination that a patient lacks decision-making capacity because of mental illness, either such physician must have the following qualifications, or another physician with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician licensed to practice medicine in New York state, who is a diplomate or eligible to be certified by the American Board of Psychiatry and Neurology or who is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that board. A record of such consultation shall be included in the patient's medical record.

(ii) If the attending physician or attending nurse practitioner makes an initial determination that a patient lacks decision-making capacity because of a developmental disability, either such physician or nurse practitioner must have the following qualifications, or another profes-

sional with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician or clinical psychologist who either is employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or has been approved by the commissioner of developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

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

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

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

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

3. Authority and duties of surrogate. (a) Scope of surrogate's authority.

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

(ii) Nothing in this article shall obligate health care providers to seek the consent of a surrogate if an adult patient has already made a decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining treatment expressed either orally during hospitalization in the presence of two witnesses eighteen years of age or older, at least one of whom is a health or social services practitioner affiliated with the hospital,

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

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

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

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

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

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

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



(c) In a general hospital, if the attending physician or attending nurse practitioner objects to a surrogate's decision, under subparagraph (ii) of paragraph (a) of this subdivision, to withdraw or withhold nutrition and hydration provided by means of medical treatment, the decision shall not be implemented until the ethics review committee, including at least one physician or nurse practitioner who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and determines that it meets the standards set forth in this subdivision and subdivision four of this section.

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

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

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

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

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

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

3. Decision-making standards and procedures for emancipated minor patient. (a) If an attending physician or attending nurse practitioner determines that a patient is an emancipated minor patient with decision-making capacity, the patient shall have the authority to decide about life-sustaining treatment. Such authority shall include a decision to withhold or withdraw life-sustaining treatment if an attending physician or attending nurse practitioner and the ethics review committee determine that the decision accords with the standards for surrogate decisions for adults, and the ethics review committee approves the decision.

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

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

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

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

(a) A health or social services practitioner consulted for a concurring determination that an adult patient lacks decision-making capacity disagrees with the attending physician's or attending nurse practitioner's determination; or

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

(c) Any person on the surrogate list objects to a surrogate's decision; or

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

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

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

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

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

1 but shall include such treatment when provided as part of post-operative  
2 care or in response to an acute illness and recovery is reasonably  
3 expected within one month or less.

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

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

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

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

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

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

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

54 (b) If the attending physician or attending nurse practitioner, with  
55 independent concurrence of a second physician or nurse practitioner

1 designated by the hospital, determines to a reasonable degree of medical  
2 certainty that:

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

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

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

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

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

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

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

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

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

50 6. Physician or nurse practitioner objection. If a physician or nurse  
51 practitioner consulted for a concurring opinion objects to an attending  
52 physician's or attending nurse practitioner's recommendation or determi-  
53 nation made pursuant to this section, or a member of the hospital staff  
54 directly responsible for the patient's care objects to an attending  
55 physician's or attending nurse practitioner's recommendation about major  
56 medical treatment or treatment without medical benefit, the matter shall

1 be referred to the ethics review committee if it cannot be otherwise  
2 resolved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



3. Committee membership. The membership of ethics review committees must be interdisciplinary and must include at least five members who have demonstrated an interest in or commitment to patient's rights or to the medical, public health, or social needs of those who are ill. At least three ethics review committee members must be health or social services practitioners, at least one of whom must be a registered nurse and one of whom must be a physician or nurse practitioner. At least one member must be a person without any governance, employment or contractual relationship with the hospital. In a residential health care facility the facility must offer the residents' council of the facility (or of another facility that participates in the committee) the opportunity to appoint up to two persons to the ethics review committee, none of whom may be a resident of or a family member of a resident of such facility, and both of whom shall be persons who have expertise in or a demonstrated commitment to patient rights or to the care and treatment of the elderly or nursing home residents through professional or community activities, other than activities performed as a health care provider.

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

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

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

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

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

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

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

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

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

(b) The following persons may commence a special proceeding in a court of competent jurisdiction to seek appointment as the health care guardian of a minor patient solely for the purpose of deciding about life-sustaining treatment pursuant to this article:

(i) the hospital administrator;

(ii) an attending physician or attending nurse practitioner;

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

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

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

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

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

(b) while a matter is under consideration by the ethics review committee, provided that the matter is promptly referred to and considered by the committee;

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

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

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

2. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient. Where more than one physician or nurse practitioner shares such responsibility, any such physician or nurse practitioner may act as the attending physician or attending nurse practitioner pursuant to this article.

2-a. "Attending nurse practitioner" means the nurse practitioner who has primary responsibility for the treatment and care of the patient. Where more than one physician and/or nurse practitioner shares such responsibility, any such physician or nurse practitioner may act as the attending physician or attending nurse practitioner pursuant to this article.

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

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

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

2. Consent by a health care agent shall be governed by article twenty-nine-C of this chapter.

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

4. (a) When the concurrence of a second physician or nurse practitioner is sought to fulfill the requirements for the issuance of a nonhospital order not to resuscitate for patients in a correctional facility, such second physician or nurse practitioner shall be selected by the chief medical officer of the department of corrections and community supervision or his or her designee.

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

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

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

7 § 2994-dd. Managing a nonhospital order not to resuscitate. 1. The  
8 attending physician or attending nurse practitioner shall record the  
9 issuance of a nonhospital order not to resuscitate in the patient's  
10 medical record.

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

19 3. An attending physician or attending nurse practitioner who has  
20 issued a nonhospital order not to resuscitate, and who transfers care of  
21 the patient to another physician or nurse practitioner, shall inform the  
22 physician or nurse practitioner of the order.

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

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

49 6. The commissioner may authorize the use of one or more alternative  
50 forms for issuing a nonhospital order not to resuscitate (in place of  
51 the standard form prescribed by the commissioner under subdivision two  
52 of this section). Such alternative form or forms may also be used to  
53 issue a non-hospital do not intubate order. Any such alternative forms  
54 intended for use for persons with developmental disabilities or persons  
55 with mental illness who are incapable of making their own health care  
56 decisions or who have a guardian of the person appointed pursuant to

1 article eighty-one of the mental hygiene law or article seventeen-A of  
2 the surrogate's court procedure act must also be approved by the commis-  
3 sioner of developmental disabilities or the commissioner of mental  
4 health, as appropriate. An alternative form under this subdivision shall  
5 otherwise conform with applicable federal and state law. This subdivi-  
6 sion does not limit, restrict or impair the use of an alternative form  
7 for issuing an order not to resuscitate in a general hospital or resi-  
8 dential health care facility under article twenty-eight of this chapter  
9 or a hospital under subdivision ten of section 1.03 of the mental  
10 hygiene law.

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

13 2. Hospital emergency services physicians and hospital emergency  
14 services nurse practitioners may direct that the order be disregarded if  
15 other significant and exceptional medical circumstances warrant disre-  
16 garding the order.

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