1162--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to execution of orders not to resuscitate and orders pertaining to life sustaining treatments; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2960 of the public health law, as amended by chap-2 ter 430 of the laws of 2017, is amended to read as follows:

3 § 2960. Legislative findings and purpose. The legislature finds that, although cardiopulmonary resuscitation has proved invaluable in the 4 5 prevention of sudden, unexpected death, it is appropriate for an attendб ing [physician or attending nurse] practitioner, in certain circum-7 stances, to issue an order not to attempt cardiopulmonary resuscitation 8 of a patient where appropriate consent has been obtained. The legislature further finds that there is a need to clarify and establish the 9 10 rights and obligations of patients, their families, and health care 11 providers regarding cardiopulmonary resuscitation and the issuance of 12 orders not to resuscitate.

13 § 2. Subdivisions 2, 5 and 20 of section 2961 of the public health 14 law, as amended by chapter 430 of the laws of 2017, are amended to read 15 as follows:

16 2. "Attending [physician] practitioner" means the physician, nurse 17 practitioner, or physician assistant, licensed or certified pursuant to 18 title eight of the education law, selected by or assigned to a patient 19 in a hospital who has primary responsibility for the treatment and care 20 of the patient. Where more than one physician [and/or], nurse practi-21 tioner, or physician assistant shares such responsibility, any such 22 physician [or], nurse practitioner, or physician assistant may act as

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

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the attending [physician or attending nurse] practitioner pursuant to 1 2 this article. "Close friend" means any person, eighteen years of age or older, 3 5. 4 who is a close friend of the patient, or relative of the patient (other 5 than a spouse, adult child, parent, brother or sister) who has mainб tained such regular contact with the patient as to be familiar with the 7 patient's activities, health, and religious or moral beliefs and who 8 presents a signed statement to that effect to the attending [physician 9 or attending nurse] practitioner. 10 20. "Reasonably available" means that a person to be contacted can be 11 contacted with diligent efforts by an attending [physician, -attending **nurse**] practitioner or another person acting on behalf of the attending 12 13 [physician, attending nurse] practitioner or the hospital. 14 § 3. Subdivision 2-a of section 2961 of the public health law is 15 REPEALED. 16 § 4. Subdivisions 2 and 3 of section 2962 of the public health law, as 17 amended by chapter 430 of the laws of 2017, are amended to read as 18 follows: 19 2. It shall be lawful for the attending [physician or attending nurse] 20 practitioner to issue an order not to resuscitate a patient, provided 21 that the order has been issued pursuant to the requirements of this article. The order shall be included in writing in the patient's chart. 22 An order not to resuscitate shall be effective upon issuance. 23 3. Before obtaining, pursuant to this article, the consent of the 24 25 patient, or of the surrogate of the patient, or parent or legal guardian 26 of the minor patient, to an order not to resuscitate, the attending 27 [physician or attending nurse] practitioner shall provide to the person giving consent information about the patient's diagnosis and prognosis, 28 29 the reasonably foreseeable risks and benefits of cardiopulmonary resus-30 citation for the patient, and the consequences of an order not to resus-31 citate. 32 § 5. Section 2963 of the public health law, as amended by chapter 430 33 of the laws of 2017, is amended to read as follows: § 2963. Determination of capacity to make a decision regarding cardiopulmonary resuscitation. 1. Every adult shall be presumed to have 34 35 36 the capacity to make a decision regarding cardiopulmonary resuscitation 37 unless determined otherwise pursuant to this section or pursuant to a court order or unless a guardian is authorized to decide about health 38 care for the adult pursuant to article eighty-one of the mental hygiene 39 law or article seventeen-A of the surrogate's court procedure act. The 40 41 attending [physician or attending nurse] practitioner shall not rely on 42 the presumption stated in this subdivision if clinical indicia of inca-43 pacity are present. 44 2. A determination that an adult patient lacks capacity shall be made 45 by the attending [physician or attending nurse] practitioner to a 46 reasonable degree of medical certainty. The determination shall be made writing and shall contain such attending [physician's or attending 47 in 48 nurse] practitioner's opinion regarding the cause and nature of the 49 patient's incapacity as well as its extent and probable duration. The 50 determination shall be included in the patient's medical chart. 51 3. (a) At least one other physician, selected by a person authorized 52 by the hospital to make such selection, must concur in the determination 53 that an adult lacks capacity. The concurring determination shall be made 54 in writing after personal examination of the patient and shall contain 55 the physician's opinion regarding the cause and nature of the patient's

1 incapacity as well as its extent and probable duration. Each concurring 2 determination shall be included in the patient's medical chart.

(b) [physician or attending nurse] practitioner 3 If the attending determines that a patient lacks capacity because of mental illness, the 4 5 concurring determination required by paragraph (a) of this subdivision б shall be provided by a physician licensed to practice medicine in New 7 York state, who is a diplomate or eligible to be certified by the Ameri-8 can Board of Psychiatry and Neurology or who is certified by the Ameri-9 can Osteopathic Board of Neurology and Psychiatry or is eligible to be 10 certified by that board.

11 If the attending [physician or attending nurse] practitioner (C) determines that a patient lacks capacity because of a developmental 12 13 disability, the concurring determination required by paragraph (a) of 14 this subdivision shall be provided by a physician or psychologist 15 employed by a developmental disabilities services office named in 16 section 13.17 of the mental hygiene law, or who has been employed for a 17 minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or 18 19 who has been approved by the commissioner of developmental disabilities 20 in accordance with regulations promulgated by such commissioner. Such 21 regulations shall require that a physician or psychologist possess 22 specialized training or three years experience in treating developmental 23 disabilities.

4. Notice of a determination that the patient lacks capacity shall 24 25 promptly be given (a) to the patient, where there is any indication of 26 the patient's ability to comprehend such notice, together with a copy of 27 statement prepared in accordance with section twenty-nine hundred а seventy-eight of this article, and (b) to the person on the surrogate 28 list highest in order of priority listed, when persons in prior subpara-29 30 graphs are not reasonably available. Nothing in this subdivision shall 31 preclude or require notice to more than one person on the surrogate 32 list.

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

37 § 6. Subdivision 2 of section 2964 of the public health law, as 38 amended by chapter 430 of the laws of 2017, is amended to read as 39 follows:

40 2. (a) During hospitalization, an adult with capacity may express a 41 decision consenting to an order not to resuscitate orally in the pres-42 ence of at least two witnesses eighteen years of age or older, one of 43 whom is a physician [**or**], nurse practitioner, **or physician assistant** 44 affiliated with the hospital in which the patient is being treated. Any 45 such decision shall be recorded in the patient's medical chart.

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

50 (c) An attending [**physician or attending nurse**] practitioner who is 51 provided with or informed of a decision pursuant to this subdivision 52 shall record or include the decision in the patient's medical chart if 53 the decision has not been recorded or included, and either:

54 (i) promptly issue an order not to resuscitate the patient or issue an 55 order at such time as the conditions, if any, specified in the decision

are met, and inform the hospital staff responsible for the patient's 1 2 care of the order; or (ii) promptly make his or her objection to the issuance of such an 3 4 order and the reasons therefor known to the patient and either make all 5 reasonable efforts to arrange for the transfer of the patient to another б physician [or], nurse practitioner or physician assistant, if necessary, 7 or promptly submit the matter to the dispute mediation system. 8 (d) Prior to issuing an order not to resuscitate a patient who has 9 expressed a decision consenting to an order not to resuscitate under 10 specified medical conditions, the attending [physician or attending **nurse**] practitioner must make a determination, to a reasonable degree of 11 medical certainty, that such conditions exist, and include the determi-12 13 nation in the patient's medical chart. 14 § 7. Subdivisions 3 and 4 of section 2965 of the public health law, as 15 amended by chapter 430 of the laws of 2017, are amended to read as 16 follows: 17 3. (a) The surrogate shall make a decision regarding cardiopulmonary 18 resuscitation on the basis of the adult patient's wishes including a consideration of the patient's religious and moral beliefs, or, if the 19 20 patient's wishes are unknown and cannot be ascertained, on the basis of 21 the patient's best interests. 22 (b) Notwithstanding any law to the contrary, the surrogate shall have 23 the same right as the patient to receive medical information and medical 24 records. 25 (c) A surrogate may consent to an order not to resuscitate on behalf 26 of an adult patient only if there has been a determination by an attend-27 ing [physician or attending nurse] practitioner with the concurrence of another physician [or], nurse practitioner or physician assistant 28 selected by a person authorized by the hospital to make such selection, 29 30 given after personal examination of the patient that, to a reasonable 31 degree of medical certainty: 32 (i) the patient has a terminal condition; or 33 (ii) the patient is permanently unconscious; or 34 (iii) resuscitation would be medically futile; or 35 (iv) resuscitation would impose an extraordinary burden on the patient 36 in light of the patient's medical condition and the expected outcome of 37 resuscitation for the patient. 38 Each determination shall be included in the patient's medical chart. 39 4. (a) A surrogate shall express a decision consenting to an order not 40 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 deci-41 42 sion, or (ii) orally, to two persons eighteen years of age or older, one 43 of whom is a physician [or], nurse practitioner or physician assistant 44 affiliated with the hospital in which the patient is being treated. Any 45 such decision shall be recorded in the patient's medical chart. 46 (b) The attending [physician or attending nurse] practitioner who is 47 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 48 49 issuance of an order not to resuscitate, shall either: 50 (i) promptly issue an order not to resuscitate the patient and inform 51 the hospital staff responsible for the patient's care of the order; or 52 (ii) promptly make the attending [physician's or attending nurse] 53 practitioner's objection to the issuance of such an order known to the 54 surrogate and either make all reasonable efforts to arrange for the 55 transfer of the patient to another physician [**er**], nurse practitioner **or**

physician assistant, if necessary, or promptly refer the matter to the 1 2 dispute mediation system. (c) If the attending [physician or attending nurse] practitioner has 3 actual notice of opposition to a surrogate's consent to an order not to 4 5 resuscitate by any person on the surrogate list, the physician $[\Theta^{*}]_{I}$ б nurse practitioner or physician assistant shall submit the matter to the 7 dispute mediation system and such order shall not be issued or shall be 8 revoked in accordance with the provisions of subdivision three of 9 section twenty-nine hundred seventy-two of this article. 10 § 8. Section 2966 of the public health law, as amended by chapter 430 11 of the laws of 2017, is amended to read as follows: § 2966. Decision-making on behalf of an adult patient without capacity 12 13 whom no surrogate is available. 1. If no surrogate is reasonably for 14 available, willing to make a decision regarding issuance of an order not 15 to resuscitate, and competent to make a decision regarding issuance of 16 an order not to resuscitate on behalf of an adult patient who lacks 17 capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation, an attending [physician or attending 18 **nurse**] practitioner (a) may issue an order not to resuscitate the 19 20 patient, provided that the attending [physician or attending nurse] 21 practitioner determines, in writing, that, to a reasonable degree of medical certainty, resuscitation would be medically futile, and another 22 physician [**or**], nurse practitioner **or physician assistant** selected by a 23 24 person authorized by the hospital to make such selection, after personal 25 examination of the patient, reviews and concurs in writing with such 26 determination, or, (b) shall issue an order not to resuscitate the 27 patient, provided that, pursuant to subdivision one of section twentynine hundred seventy-six of this article, a court has granted a judgment 28 29 directing the issuance of such an order. 30 2. Notwithstanding any other provision of this section, where a deci-31 sion to consent to an order not to resuscitate has been made, notice of 32 the decision shall be given to the patient where there is any indication 33 of the patient's ability to comprehend such notice. If the patient 34 objects, an order not to resuscitate shall not be issued. 35 9. Section 2967 of the public health law, as amended by chapter 430 S 36 of the laws of 2017, is amended to read as follows: 37 § 2967. Decision-making on behalf of a minor patient. 1. An attending

38 [physician or attending nurse] practitioner, in consultation with a 39 minor's parent or legal guardian, shall determine whether a minor has 40 the capacity to make a decision regarding resuscitation.

41 2. (a) The consent of a minor's parent or legal guardian and the 42 consent of the minor, if the minor has capacity, must be obtained prior 43 to issuing an order not to resuscitate the minor.

44 (b) Where the attending [physician or attending nurse] practitioner 45 has reason to believe that there is another parent or a non-custodial 46 parent who has not been informed of a decision to issue an order not to 47 resuscitate the minor, the attending [physician or attending nurse] practitioner, or someone acting on behalf of the [attending physician or 48 49 attending nurse] practitioner, shall make reasonable efforts to determine if the uninformed parent or non-custodial parent has maintained 50 51 substantial and continuous contact with the minor and, if so, shall make 52 diligent efforts to notify that parent or non-custodial parent of the 53 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 1 written concurrence of another physician [er], nurse practitioner or 2 physician assistant selected by a person authorized by the hospital to 3 make such selections given after personal examination of the patient, 4 that, to a reasonable degree of medical certainty, the minor suffers 5 from one of the medical conditions set forth in paragraph (c) of subdi-6 vision three of section twenty-nine hundred sixty-five of this article. 7 Each determination shall be included in the patient's medical chart.

8 4. (a) A parent or legal guardian of a minor, in making a decision 9 regarding cardiopulmonary resuscitation, shall consider the minor 10 patient's wishes, including a consideration of the minor patient's reli-11 gious and moral beliefs, and shall express a decision consenting to issuance of an order not to resuscitate either (i) in writing, dated and 12 13 signed in the presence of one witness eighteen years of age or older who 14 shall sign the decision, or (ii) orally, to two persons eighteen years 15 of age or older, one of whom is a physician [or], nurse practitioner or 16 physician assistant affiliated with the hospital in which the patient is 17 being treated. Any such decision shall be recorded in the patient's 18 medical chart.

19 (b) The attending [physician or attending nurse] practitioner who is 20 provided with the decision of a minor's parent or legal guardian, 21 expressed pursuant to this subdivision, and of the minor if the minor capacity, shall include such decision or decisions in the minor's 22 has medical chart and shall comply with the provisions of paragraph (b) of 23 24 subdivision four of section twenty-nine hundred sixty-five of this arti-25 cle.

26 (c) If the attending [physician or attending nurse] practitioner has 27 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 28 29 physician [**er**], nurse practitioner <u>or physician assistant</u> shall submit 30 the matter to the dispute mediation system and such order shall not be 31 issued or shall be revoked in accordance with the provisions of subdivi-32 sion three of section twenty-nine hundred seventy-two of this article. 33 § 10. Section 2969 of the public health law, as amended by chapter 430

33 § 10. Section 2969 of the public health law, as amended by chapter 430 34 of the laws of 2017, is amended to read as follows:

35 § 2969. Revocation of consent to order not to resuscitate. 1. A person 36 may, at any time, revoke his or her consent to an order not to resusci-37 tate himself or herself by making either a written or an oral declara-38 tion to a physician or member of the nursing staff at the hospital where 39 he or she is being treated, or by any other act evidencing a specific 40 intent to revoke such consent.

41 2. Any surrogate, parent, or legal guardian may at any time revoke his 42 or her consent to an order not to resuscitate a patient by (a) notifying 43 a physician or member of the nursing staff of the revocation of consent 44 in writing, dated and signed, or (b) orally notifying the attending 45 [physician or attending nurse] practitioner in the presence of a witness 46 eighteen years of age or older.

47 Any physician [**er**], nurse practitioner <u>or physician assistant</u> who 3. is informed of or provided with a revocation of consent pursuant to this 48 section shall immediately include the revocation in the patient's chart, 49 cancel the order, and notify the hospital staff responsible for the 50 51 patient's care of the revocation and cancellation. Any member of the nursing staff, other than a nurse practitioner or physician assistant, 52 53 who is informed of or provided with a revocation of consent pursuant to 54 this section shall immediately notify a physician $[\bullet r]_{I}$ nurse practi-55 tioner or physician assistant of such revocation.

1 § 11. Section 2970 of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows: 2 3 § 2970. Physician [and], nurse practitioner and physician assistant 4 review of the order not to resuscitate. 1. For each patient for whom an 5 order not to resuscitate has been issued, the attending [physician or б attending nurse] practitioner shall review the patient's chart to deter-7 mine if the order is still appropriate in light of the patient's condi-8 tion and shall indicate on the patient's chart that the order has been 9 reviewed each time the patient is required to be seen by a physician but 10 at least every sixty days. 11 Failure to comply with this subdivision shall not render an order not 12 to resuscitate ineffective. (a) If the attending [physician or attending nurse] practitioner 13 2. 14 determines at any time that an order not to resuscitate is no longer appropriate because the patient's medical condition has improved, the 15 16 physician [or], nurse practitioner or physician assistant shall imme-17 diately notify the person who consented to the order. Except as provided 18 in paragraph (b) of this subdivision, if such person declines to revoke 19 consent to the order, the physician [or], nurse practitioner or physi-20 cian assistant shall promptly (i) make reasonable efforts to arrange for 21 the transfer of the patient to another physician or (ii) submit the 22 matter to the dispute mediation system. (b) If the order not to resuscitate was entered upon the consent of a 23 surrogate, parent, or legal guardian and the attending [physician or 24 25 attending nurse] practitioner who issued the order, or, if unavailable, 26 another attending [physician or attending nurse] practitioner at any 27 time determines that the patient does not suffer from one of the medical conditions set forth in paragraph (c) of subdivision three of section 28 twenty-nine hundred sixty-five of this article, the attending [physician 29 30 or attending nurse practitioner shall immediately include such determi-31 nation in the patient's chart, cancel the order, and notify the person 32 who consented to the order and all hospital staff responsible for the 33 patient's care of the cancellation. (C) 34 If an order not to resuscitate was entered upon the consent of a 35 surrogate and the patient at any time gains or regains capacity, the 36 attending [physician or attending nurse] practitioner who issued the 37 order, or, if unavailable, another attending [physician or attending 38 **nurse**] practitioner shall immediately cancel the order and notify the person who consented to the order and all hospital staff directly 39 40 responsible for the patient's care of the cancellation. 41 § 12. The opening paragraph and subdivision 2 of section 2971 of the 42 public health law, as amended by chapter 430 of the laws of 2017, are 43 amended to read as follows: 44 If a patient for whom an order not to resuscitate has been issued is 45 transferred from a hospital to a different hospital the order shall 46 remain effective, unless revoked pursuant to this article, until the 47 attending [physician or attending nurse] practitioner first examines the transferred patient, whereupon the attending [physician or attending 48 49 **nurse**] practitioner must either: 2. Cancel the order not to resuscitate, provided the attending [physi-50 51 eian or attending nurse] practitioner immediately notifies the person 52 who consented to the order and the hospital staff directly responsible for the patient's care of the cancellation. Such cancellation does not 53 54 preclude the entry of a new order pursuant to this article.

1 § 13. Subdivisions 1, 2 and 4 of section 2972 of the public health 2 law, as amended by chapter 430 of the laws of 2017, are amended to read 3 as follows:

4 1. (a) Each hospital shall establish a mediation system for the 5 purpose of mediating disputes regarding the issuance of orders not to 6 resuscitate.

7 (b) The dispute mediation system shall be described in writing and 8 adopted by the hospital's governing authority. It may utilize existing hospital resources, such as a patient advocate's office or hospital 9 10 chaplain's office, or it may utilize a body created specifically for 11 this purpose, but, in the event a dispute involves a patient deemed to 12 lack capacity pursuant to (i) paragraph (b) of subdivision three of 13 section twenty-nine hundred sixty-three of this article, the system must 14 include a physician [or], nurse practitioner or physician assistant 15 eligible to provide a concurring determination pursuant to such subdivi-16 sion, or a family member or guardian of the person of a person with a mental illness of the same or similar nature, or (ii) paragraph (c) of 17 subdivision three of section twenty-nine hundred sixty-three of this 18 19 article, the system must include a physician [or], nurse practitioner or 20 physician assistant eligible to provide a concurring determination 21 pursuant to such subdivision, or a family member or guardian of the person of a person with a developmental disability of the same or simi-22 23 lar nature.

24 2. The dispute mediation system shall be authorized to mediate any 25 dispute, including disputes regarding the determination of the patient's 26 capacity, arising under this article between the patient and an attend-27 ing [physician, attending nurse] practitioner or the hospital that is caring for the patient and, if the patient is a minor, the patient's 28 29 parent, or among an attending [physician, an attending nurse] practi-30 tioner, a parent, non-custodial parent, or legal guardian of a minor 31 patient, any person on the surrogate list, and the hospital that is 32 caring for the patient.

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

37 (a) the dispute mediation system has concluded its efforts to resolve 38 the dispute, or

39 (b) seventy-two hours have elapsed from the time of submission without resolution of the dispute, whichever shall occur first, the attending 40 [physician or attending nurse] practitioner shall either: (i) promptly 41 42 issue an order not to resuscitate the patient or issue the order at such 43 time as the conditions, if any, specified in the decision are met, and inform the hospital staff responsible for the patient's care of the 44 45 order; or (ii) promptly arrange for the transfer of the patient to 46 another physician, nurse practitioner, physician assistant or hospital.

47 § 14. Subdivision 1 of section 2973 of the public health law, as 48 amended by chapter 430 of the laws of 2017, is amended to read as 49 follows:

1. The patient, an attending [physician, attending nurse] practitioner, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and the facility director, may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, with respect to any dispute arising under this article, except that the decision of a patient not to

consent to issuance of an order not to resuscitate may not be subjected 1 2 to judicial review. In any proceeding brought pursuant to this subdivi-3 sion challenging a decision regarding issuance of an order not to resus-4 citate on the ground that the decision is contrary to the patient's 5 wishes or best interests, the person or entity challenging the decision б must show, by clear and convincing evidence, that the decision is 7 contrary to the patient's wishes including consideration of the 8 patient's religious and moral beliefs, or, in the absence of evidence of 9 the patient's wishes, that the decision is contrary to the patient's 10 best interests. In any other proceeding brought pursuant to this subdi-11 vision, the court shall make its determination based upon the applicable 12 substantive standards and procedures set forth in this article.

13 § 15. Section 2976 of the public health law, as amended by chapter 430 14 of the laws of 2017, is amended to read as follows:

15 § 2976. Judicially approved order not to resuscitate. 1. If no surro-16 gate is reasonably available, willing to make a decision regarding issu-17 ance of an order not to resuscitate, and competent to make a decision 18 regarding issuance of an order not to resuscitate on behalf of an adult 19 patient who lacks capacity and who had not previously expressed a deci-20 sion regarding cardiopulmonary resuscitation pursuant to this article, 21 an attending [physician or attending nurse] practitioner or hospital may commence a special proceeding pursuant to article four of the civil 22 practice law and rules, in a court of competent jurisdiction, for a 23 judgment directing the physician [or], nurse practitioner or physician 24 25 assistant to issue an order not to resuscitate where the patient has a 26 terminal condition, is permanently unconscious, or resuscitation would 27 impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the 28 29 patient, and issuance of an order not to resuscitate is consistent with 30 the patient's wishes including a consideration of the patient's reli-31 gious and moral beliefs or, in the absence of evidence of the patient's 32 wishes, the patient's best interests.

33 2. Nothing in this article shall be construed to preclude a court of 34 competent jurisdiction from approving the issuance of an order not to 35 resuscitate under circumstances other than those under which such an 36 order may be issued pursuant to this article.

§ 16. Subdivisions 2, 9-a and 13 of section 2980 of the public health law, subdivisions 2 and 13 as added by chapter 752 of the laws of 1990, subdivision 9-a as added by chapter 8 of the laws of 2010, are amended to read as follows:

41 2. "Attending [physician] practitioner means the physician, physician 42 assistant, or nurse practitioner, licensed or certified pursuant to 43 title eight of the education law, selected by or assigned to a patient, 44 who has primary responsibility for the treatment and care of the 45 patient. Where more than one physician, physician assistant, or nurse 46 practitioner shares such responsibility, or where a physician, physician 47 assistant, or nurse practitioner is acting on the attending [physi-**<u>cian's</u>**] <u>practitioner's</u> behalf, any such physician, <u>nurse practitioner</u>, 48 49 or physician assistant may act as the attending [physician] practitioner 50 pursuant to this article.

9-a. "Life-sustaining treatment" means any medical treatment or procedure without which the patient will die within a relatively short time, as determined by an attending [physician] practitioner to a reasonable degree of medical certainty. For purposes of this article, cardiopulmonary resuscitation is presumed to be a life sustaining treatment without

the necessity of a determination by an attending [physician] practition-1 2 er. 3 13. "Reasonably available" means that a person to be contacted can be 4 contacted with diligent efforts by an attending [physician] practitioner 5 or another person acting on behalf of the attending [physician] practiб tioner or the hospital. 7 § 17. Subdivision 2-c of section 2980 of the public health law is 8 REPEALED. 9 § 18. Subdivisions 2, 3 and 6 of section 2981 of the public health 10 law, as amended by chapter 342 of the laws of 2018, are amended to read 11 as follows: 12 2. Health care proxy; execution; witnesses. (a) A competent adult may 13 appoint a health care agent by a health care proxy, signed and dated by 14 the adult in the presence of two adult witnesses who shall also sign the 15 proxy. Another person may sign and date the health care proxy for the 16 adult if the adult is unable to do so, at the adult's direction and in 17 the adult's presence, and in the presence of two adult witnesses who shall sign the proxy. The witnesses shall state that the principal 18 19 appeared to execute the proxy willingly and free from duress. The person 20 appointed as agent shall not act as witness to execution of the health 21 care proxy. 22 (b) For persons who reside in a mental hygiene facility operated or 23 licensed by the office of mental health, at least one witness shall be 24 an individual who is not affiliated with the facility and, if the mental 25 hygiene facility is also a hospital as defined in subdivision ten of 26 section 1.03 of the mental hygiene law, at least one witness shall be a 27 qualified psychiatrist or psychiatric nurse practitioner. 28 (c) For persons who reside in a mental hygiene facility operated or 29 licensed by the office for people with developmental disabilities, at least one witness shall be an individual who is not affiliated with the 30 31 facility and at least one witness shall be a physician, nurse practi-32 tioner, physician assistant or clinical psychologist who either is employed by a developmental disabilities services office named in 33 section 13.17 of the mental hygiene law or who has been employed for a 34 35 minimum of two years to render care and service in a facility operated 36 or licensed by the office for people with developmental disabilities, or 37 has been approved by the commissioner of developmental disabilities in 38 accordance with regulations approved by the commissioner. Such regu-39 lations shall require that a physician, nurse practitioner, physician assistant, or clinical psychologist possess specialized training or 40 41 three years experience in treating developmental disabilities. 42 3. Restrictions on who may be and limitations on a health care agent. 43 (a) An operator, administrator or employee of a hospital may not be 44 appointed as a health care agent by any person who, at the time of the 45 appointment, is a patient or resident of, or has applied for admission 46 to, such hospital. 47 (b) The restriction in paragraph (a) of this subdivision shall not 48 apply to: 49 (i) an operator, administrator or employee of a hospital who is 50 related to the principal by blood, marriage or adoption; or 51 (ii) a physician, physician assistant, or nurse practitioner, subject 52 to the limitation set forth in paragraph (c) of this subdivision, except that no physician or nurse practitioner affiliated with a mental hygiene 53 facility or a psychiatric unit of a general hospital may serve as agent 54 for a principal residing in or being treated by such facility or unit 55

unless the physician is related to the principal by blood, marriage or 1 2 adoption. (c) If a physician, physician assistant, or nurse practitioner is 3 4 appointed agent, the physician, physician assistant, or nurse practi-5 tioner shall not act as the patient's attending [physician or attending б **nurse**] practitioner after the authority under the health care proxy 7 commences, unless the physician ... physician assistant, or nurse practi-8 tioner declines the appointment as agent at or before such time. 9 (d) No person who is not the spouse, child, parent, brother, sister or 10 grandparent of the principal, or is the issue of, or married to, such person, shall be appointed as a health care agent if, at the time of 11 appointment, he or she is presently appointed health care agent for ten 12 13 principals. 14 6. Alternate agent. (a) A competent adult may designate an alternate 15 agent in the health care proxy to serve in place of the agent when: (i) the attending [physician or attending nurse] practitioner has 16 determined in a writing signed by the physician, physician assistant, or 17 nurse practitioner (A) that the person appointed as agent is not reason-18 ably available, willing and competent to serve as agent, and (B) that 19 20 such person is not expected to become reasonably available, willing and 21 competent to make a timely decision given the patient's medical circum-22 stances; (ii) the agent is disqualified from acting on the principal's behalf 23 24 pursuant to subdivision three of this section or subdivision two of 25 section two thousand nine hundred ninety-two of this article, or 26 (iii) under conditions set forth in the proxy. 27 (b) If, after an alternate agent's authority commences, the person 28 appointed as agent becomes available, willing and competent to serve as 29 agent: 30 (i) the authority of the alternate agent shall cease and the authority 31 of the agent shall commence; and 32 (ii) the attending [physician or attending nurse] practitioner shall 33 record the change in agent and the reasons therefor in the principal's 34 medical record. § 19. Subdivisions 1, 2, 6 and 7 of section 2983 of the public health 35 36 law, as amended by chapter 342 of the laws of 2018, are amended to read 37 as follows: 38 1. Determination by attending [physician or attending nurse] practitioner. (a) A determination that a principal lacks capacity to make 39 health care decisions shall be made by the attending [physician or 40 attending nurge practitioner to a reasonable degree of medical certain-41 42 ty. The determination shall be made in writing and shall contain such attending [physician's or attending nurse] practitioner's 43 opinion regarding the cause and nature of the principal's incapacity as well as 44 45 its extent and probable duration. The determination shall be included in 46 the patient's medical record. For a decision to withdraw or withhold 47 life-sustaining treatment, the attending [physician or attending nurse] practitioner who makes the determination that a principal lacks capacity 48 to make health care decisions must consult with another physician, 49 physician assistant, or nurse practitioner to confirm such determi-50 nation. Such consultation shall also be included within the patient's 51 52 medical record. 53 If an attending [physician or attending nurse] practitioner of a (b) 54 patient in a general hospital or mental hygiene facility determines that a patient lacks capacity because of mental illness, the attending 55 [physician or attending nurse] practitioner who makes the determination 56

1 must be, or must consult, for the purpose of confirming the determi-2 nation, with a qualified psychiatrist. A record of such consultation 3 shall be included in the patient's medical record.

4 (c) If the attending [physician or attending nurse] practitioner 5 determines that a patient lacks capacity because of a developmental б disability, the attending [physician or attending nurse] practitioner 7 who makes the determination must be, or must consult, for the purpose of 8 confirming the determination, with a physician, nurse practitioner_ 9 physician assistant, or clinical psychologist who either is employed by 10 a developmental disabilities services office named in section 13.17 of 11 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 12 the office for people with developmental disabilities, or has been 13 14 approved by the commissioner of developmental disabilities in accordance 15 with regulations promulgated by such commissioner. Such regulations shall require that a physician, nurse practitioner, physician assistant, 16 17 clinical psychologist possess specialized training or three years or experience in treating developmental disabilities. A record of such 18 19 consultation shall be included in the patient's medical record.

20 (d) A physician, physician assistant, or nurse practitioner who has 21 been appointed as a patient's agent shall not make the determination of 22 the patient's capacity to make health care decisions.

23 2. Request for a determination. If requested by the agent, an attend-24 ing [physician or attending nurse] practitioner shall make a determi-25 nation regarding the principal's capacity to make health care decisions 26 for the purposes of this article.

6. Confirmation of lack of capacity. (a) The attending [physician or attending nurse] practitioner shall confirm the principal's continued incapacity before complying with an agent's health care decisions, other than those decisions made at or about the time of the initial determination made pursuant to subdivision one of this section. The confirmation shall be stated in writing and shall be included in the principal's medical record.

34 (b) The notice requirements set forth in subdivision three of this 35 section shall not apply to the confirmation required by this subdivi-36 sion.

37 7. Effect of recovery of capacity. In the event the attending [physi-38 cian or attending nurse] practitioner determines that the principal has 39 regained capacity, the authority of the agent shall cease, but shall 40 recommence if the principal subsequently loses capacity as determined 41 pursuant to this section.

42 § 20. Subdivision 2 of section 2985 of the public health law, as 43 amended by chapter 342 of the laws of 2018, is amended to read as 44 follows:

45 2. Duty to record revocation. (a) A physician, physician assistant, or 46 nurse practitioner who is informed of or provided with a revocation of a 47 health care proxy shall immediately (i) record the revocation in the 48 principal's medical record and (ii) notify the agent and the medical 49 staff responsible for the principal's care of the revocation.

50 (b) Any member of the staff of a health care provider informed of or 51 provided with a revocation of a health care proxy pursuant to this 52 section shall immediately notify a physician<u>, physician assistant</u>, or 53 nurse practitioner of such revocation.

54 § 21. Subdivisions 2 and 4 of section 2994-a of the public health law, 55 as amended by chapter 430 of the laws of 2017, are amended to read as 56 follows: A. 1162--A

2. "Attending [physician"] practitioner" means a physician, nurse 1 practitioner or physician assistant, selected by or assigned to a 2 patient pursuant to hospital policy, who has primary responsibility for 3 4 the treatment and care of the patient. Where more than one physician 5 [and/or], nurse practitioner or physician assistant shares such responб sibility, or where a physician [or], nurse practitioner or physician **assistant** is acting on the attending [**physician's or attending nurse**] practitioner's behalf, any such physician [**or**], nurse practitioner **or** 7 8 9 physician assistant may act as an attending [physician or attending 10 **nurse**] practitioner pursuant to this article.

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

18 § 22. Subdivisions 2 and 3 of section 2994-b of the public health law, 19 as amended by chapter 430 of the laws of 2017, are amended to read as 20 follows:

21 2. Prior to seeking or relying upon a health care decision by a surro-22 gate for a patient under this article, the attending [physician or attending nurse | practitioner shall make reasonable efforts to determine 23 whether the patient has a health care agent appointed pursuant to arti-24 25 cle twenty-nine-C of this chapter. If so, health care decisions for the 26 patient shall be governed by such article, and shall have priority over 27 decisions by any other person except the patient or as otherwise 28 provided in the health care proxy.

29 3. Prior to seeking or relying upon a health care decision by a surro-30 gate for a patient under this article, if the attending [physician or 31 attending nurse practitioner has reason to believe that the patient has 32 a history of receiving services for mental retardation or a develop-33 mental disability; it reasonably appears to the attending [physician or 34 **attending nurse**] practitioner that the patient has mental retardation or 35 a developmental disability; or the [attending physician or attending 36 **nurse**] practitioner has reason to believe that the patient has been 37 transferred from a mental hygiene facility operated or licensed by the 38 office of mental health, then such physician [**or**], nurse practitioner or 39 physician assistant shall make reasonable efforts to determine whether 40 paragraphs (a), (b) or (c) of this subdivision are applicable:

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

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

52 (c) If a health care decision for a patient cannot be made under para-53 graphs (a) or (b) of this subdivision, but consent for the decision may 54 be provided pursuant to the mental hygiene law or regulations of the 55 office of mental health or the office for people with developmental

disabilities, then the decision shall be governed by such statute or 1 2 regulations and not by this article. § 23. Subdivisions 2, 3 and 7 of section 2994-c of the public health 3 law, as amended by chapter 430 of the laws of 2017, are amended to read 4 5 as follows: б 2. Initial determination by attending [physician or attending nurse] 7 practitioner. An attending [physician or attending nurse] practitioner 8 shall make an initial determination that an adult patient lacks deci-9 sion-making capacity to a reasonable degree of medical certainty. Such 10 determination shall include an assessment of the cause and extent of the 11 patient's incapacity and the likelihood that the patient will regain 12 decision-making capacity. 13 3. Concurring determinations. (a) An initial determination that а 14 lacks decision-making capacity shall be subject to a concurring patient 15 determination, independently made, where required by this subdivision. A 16 concurring determination shall include an assessment of the cause and 17 extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity, and shall be included in the 18 patient's medical record. Hospitals shall adopt written policies identi-19 20 fying the training and credentials of health or social services practi-21 tioners qualified to provide concurring determinations of incapacity. 22 (b) (i) In a residential health care facility, a health or social 23 services practitioner employed by or otherwise formally affiliated with 24 the facility must independently determine whether an adult patient lacks 25 decision-making capacity. 26 (ii) In a general hospital a health or social services practitioner 27 employed by or otherwise formally affiliated with the facility must 28 independently determine whether an adult patient lacks decision-making 29 capacity if the surrogate's decision concerns the withdrawal or with-30 holding of life-sustaining treatment. 31 (iii) With respect to decisions regarding hospice care for a patient 32 in a general hospital or residential health care facility, the health or 33 social services practitioner must be employed by or otherwise formally affiliated with the general hospital or residential health care facili-34 35 ty. 36 (c) (i) If the attending [physician or attending nurse] practitioner 37 makes an initial determination that a patient lacks decision-making 38 capacity because of mental illness, either such physician must have the 39 following qualifications, or another physician with the following qualifications must independently determine whether the patient lacks deci-40 41 sion-making capacity: a physician licensed to practice medicine in New 42 York state, who is a diplomate or eligible to be certified by the Ameri-43 can Board of Psychiatry and Neurology or who is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be 44 45 certified by that board. A record of such consultation shall be included 46 in the patient's medical record. 47 (ii) If the attending [physician or attending nurse] practitioner 48 makes an initial determination that a patient lacks decision-making capacity because of a developmental disability, either such physician 49 [or], nurse practitioner or physician assistant must have the following 50 qualifications, or another professional with the following qualifica-51 52 tions must independently determine whether the patient lacks decision-53 making capacity: a physician or clinical psychologist who either is 54 employed by a developmental disabilities services office named in 55 section 13.17 of the mental hygiene law, or who has been employed for a 56 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.

8 (d) If an attending [physician or attending nurse] practitioner has 9 determined that the patient lacks decision-making capacity and if the 10 health or social services practitioner consulted for a concurring deter-11 mination disagrees with the attending [physician's or the attending 12 nurse] practitioner's determination, the matter shall be referred to the 13 ethics review committee if it cannot otherwise be resolved.

14 7. Confirmation of continued lack of decision-making capacity. An 15 [physician or attending nurse] practitioner shall confirm the attending 16 adult patient's continued lack of decision-making capacity before complying with health care decisions made pursuant to this article, 17 other than those decisions made at or about the time of the initial 18 19 determination. A concurring determination of the patient's continued 20 lack of decision-making capacity shall be required if the subsequent 21 health care decision concerns the withholding or withdrawal of life-sustaining treatment. Health care providers shall not be required to inform 22 the patient or surrogate of the confirmation. 23

24 § 24. Subdivisions 2, 3 and 5 of section 2994-d of the public health 25 law, as amended by chapter 430 of the laws of 2017, are amended to read 26 as follows:

27 2. Restrictions on who may be a surrogate. An operator, administrator, 28 employee of a hospital or a mental hygiene facility from which the or 29 patient was transferred, or a physician [**er**], nurse practitioner <u>or</u> 30 physician assistant who has privileges at the hospital or a health care 31 provider under contract with the hospital may not serve as the surrogate 32 for any adult who is a patient of such hospital, unless such individual is related to the patient by blood, marriage, domestic partnership, or 33 34 adoption, or is a close friend of the patient whose friendship with the 35 patient preceded the patient's admission to the facility. If a physician 36 [er], nurse practitioner or physician assistant serves as surrogate, the 37 physician [or physician assistant shall not act 38 as the patient's attending [physician or attending nurse] practitioner 39 after his or her authority as surrogate begins.

40 3. Authority and duties of surrogate. (a) Scope of surrogate's author-41 ity.

42 (i) Subject to the standards and limitations of this article, the 43 surrogate shall have the authority to make any and all health care deci-44 sions on the adult patient's behalf that the patient could make.

45 (ii) Nothing in this article shall obligate health care providers to 46 seek the consent of a surrogate if an adult patient has already made a 47 decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining 48 49 treatment expressed either orally during hospitalization in the presence 50 of two witnesses eighteen years of age or older, at least one of whom is 51 a health or social services practitioner affiliated with the hospital, 52 in writing. If an attending [physician or attending nurse] practior tioner relies on the patient's prior decision, the physician $[\mathbf{e}_{L}]_{L}$ nurse 53 54 practitioner or physician assistant shall record the prior decision in 55 the patient's medical record. If a surrogate has already been designated 56 for the patient, the attending [physician or attending nurse] practi1 tioner shall make reasonable efforts to notify the surrogate prior to 2 implementing the decision; provided that in the case of a decision to 3 withdraw or withhold life-sustaining treatment, the attending [physician 4 or attending nurse] practitioner shall make diligent efforts to notify 5 the surrogate and, if unable to notify the surrogate, shall document the 6 efforts that were made to do so.

7 (b) Commencement of surrogate's authority. The surrogate's authority 8 shall commence upon a determination, made pursuant to section twenty-9 nine hundred ninety-four-c of this article, that the adult patient lacks 10 decision-making capacity and upon identification of a surrogate pursuant 11 to subdivision one of this section. In the event an attending [physician 12 or nurse] practitioner determines that the patient has regained deci-13 sion-making capacity, the authority of the surrogate shall cease.

14 (c) Right and duty to be informed. Notwithstanding any law to the 15 contrary, the surrogate shall have the right to receive medical informa-16 tion and medical records necessary to make informed decisions about the 17 patient's health care. Health care providers shall provide and the 18 surrogate shall seek information necessary to make an informed decision, 19 including information about the patient's diagnosis, prognosis, the 20 nature and consequences of proposed health care, and the benefits and 21 risks of and [alternative] alternatives to proposed health care.

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

29 (a)(i) Treatment would be an extraordinary burden to the patient and 30 an attending [physician or attending nurse] practitioner determines, 31 with the independent concurrence of another physician $[\mathbf{or}]_{\boldsymbol{\mu}}$ nurse prac-32 titioner or physician assistant, that, to a reasonable degree of medical 33 certainty and in accord with accepted medical standards, (A) the patient 34 has an illness or injury which can be expected to cause death within six 35 months, whether or not treatment is provided; or (B) the patient is 36 permanently unconscious; or

37 (ii) The provision of treatment would involve such pain, suffering or 38 other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances and the patient has an irre-39 versible or incurable condition, as determined by an attending [physi-40 41 **cian or attending nurse**] practitioner with the independent concurrence 42 of another physician [er], nurse practitioner or physician assistant to 43 a reasonable degree of medical certainty and in accord with accepted 44 medical standards.

45 (b) In a residential health care facility, a surrogate shall have the 46 authority to refuse life-sustaining treatment under subparagraph (ii) of 47 paragraph (a) of this subdivision only if the ethics review committee, including at least one physician [or], nurse practitioner or physician 48 assistant who is not directly responsible for the patient's care, or a 49 50 court of competent jurisdiction, reviews the decision and determines 51 that it meets the standards set forth in this article. This requirement 52 shall not apply to a decision to withhold cardiopulmonary resuscitation. 53 (c) In a general hospital, if the attending [physician or attending 54 **nurse**] practitioner objects to a surrogate's decision, under subpara-55 graph (ii) of paragraph (a) of this subdivision, to withdraw or withhold 56 nutrition and hydration provided by means of medical treatment, the

1 decision shall not be implemented until the ethics review committee, including at least one physician [or], nurse practitioner or physician 2 assistant who is not directly responsible for the patient's care, or a 3 4 court of competent jurisdiction, reviews the decision and determines 5 that it meets the standards set forth in this subdivision and subdiviб sion four of this section. (d) Providing nutrition and hydration orally, without reliance on 7 8 medical treatment, is not health care under this article and is not 9 subject to this article. 10 (e) Expression of decisions. The surrogate shall express a decision to 11 withdraw or withhold life-sustaining treatment either orally to an attending [physician or attending nurse] practitioner or in writing. 12 § 25. Subdivisions 2 and 3 of section 2994-e of the public health law, 13 14 as amended by chapter 430 of the laws of 2017, are amended to read as 15 follows: 16 2. Decision-making standards and procedures for minor patient. (a) The 17 parent or guardian of a minor patient shall make decisions in accordance with the minor's best interests, consistent with the standards set forth 18 in subdivision four of section twenty-nine hundred ninety-four-d of this 19 20 article, taking into account the minor's wishes as appropriate under the 21 circumstances. 22 (b) An attending [physician or attending nurse] practitioner, in consultation with a minor's parent or guardian, shall determine whether 23 a minor patient has decision-making capacity for a decision to withhold 24 25 or withdraw life-sustaining treatment. If the minor has such capacity, a 26 parent's or quardian's decision to withhold or withdraw life-sustaining 27 treatment for the minor may not be implemented without the minor's 28 consent. 29 (c) Where a parent or guardian of a minor patient has made a decision 30 to withhold or withdraw life-sustaining treatment and an attending 31 [physician or attending nurse] practitioner has reason to believe that 32 the minor patient has a parent or guardian who has not been informed of 33 the decision, including a non-custodial parent or guardian, an attending 34 [physician, attending nurse] practitioner or someone acting on his or her 35 behalf, shall make reasonable efforts to determine if the uninformed 36 parent or guardian has maintained substantial and continuous contact 37 with the minor and, if so, shall make diligent efforts to notify that 38 parent or guardian prior to implementing the decision. 3. Decision-making standards and procedures for emancipated minor 39 40 patient. (a) If an attending [physician or attending nurse] practitioner 41 determines that a patient is an emancipated minor patient with deci-42 sion-making capacity, the patient shall have the authority to decide 43 about life-sustaining treatment. Such authority shall include a decision 44 to withhold or withdraw life-sustaining treatment if an attending [physician or attending nurse] practitioner and the ethics review 45 46 committee determine that the decision accords with the standards for 47 surrogate decisions for adults, and the ethics review committee approves 48 the decision. 49 (b) If the hospital can with reasonable efforts ascertain the identity 50 of the parents or guardian of an emancipated minor patient, the hospital 51 shall notify such persons prior to withholding or withdrawing life-sus-52 taining treatment pursuant to this subdivision. 53 § 26. Section 2994-f of the public health law, as amended by chapter 54 430 of the laws of 2017, is amended to read as follows: 55 S 2994-f. Obligations of attending [physician or attending nurse] 56 practitioner. 1. An attending [physician or attending nurse] practitionA. 1162--A

1 er informed of a decision to withdraw or withhold life-sustaining treatment made pursuant to the standards of this article shall record the 2 decision in the patient's medical record, review the medical basis for 3 4 the decision, and shall either: (a) implement the decision, or (b) 5 promptly make his or her objection to the decision and the reasons for б the objection known to the decision-maker, and either make all reason-7 able efforts to arrange for the transfer of the patient to another 8 physician [+], nurse practitioner or physician assistant, if necessary, 9 or promptly refer the matter to the ethics review committee. 10 2. If an attending [physician or attending nurse] practitioner has 11 actual notice of the following objections or disagreements, he or she shall promptly refer the matter to the ethics review committee if the 12 13 objection or disagreement cannot otherwise be resolved: 14 (a) A health or social services practitioner consulted for a concur-15 ring determination that an adult patient lacks decision-making capacity 16 disagrees with the attending [physician's or attending nurse] practi-17 tioner's determination; or 18 (b) Any person on the surrogate list objects to the designation of the 19 surrogate pursuant to subdivision one of section twenty-nine hundred 20 ninety-four-d of this article; or 21 (c) Any person on the surrogate list objects to a surrogate's deci-22 sion; or 23 (d) A parent or guardian of a minor patient objects to the decision by 24 another parent or guardian of the minor; or 25 (e) A minor patient refuses life-sustaining treatment, and the minor's 26 parent or quardian wishes the treatment to be provided, or the minor 27 patient objects to an attending [physician's or attending nurse] practitioner's determination about decision-making capacity or recommendation 28 29 about life-sustaining treatment. 30 3. Notwithstanding the provisions of this section or subdivision one 31 of section twenty-nine hundred ninety-four-q of this article, if a 32 surrogate directs the provision of life-sustaining treatment, the denial 33 of which in reasonable medical judgment would be likely to result in the 34 death of the patient, a hospital or individual health care provider that 35 does not wish to provide such treatment shall nonetheless comply with 36 the surrogate's decision pending either transfer of the patient to a 37 willing hospital or individual health care provider, or judicial review 38 in accordance with section twenty-nine hundred ninety-four-r of this 39 article. § 27. Subdivisions 3, 4, 5, 5-a and 6 of section 2994-g of the public 40 health law, as amended by chapter 430 of the laws of 2017, are amended 41 42 to read as follows: 43 3. Routine medical treatment. (a) For purposes of this subdivision, 44 "routine medical treatment" means any treatment, service, or procedure 45 to diagnose or treat an individual's physical or mental condition, such 46 as the administration of medication, the extraction of bodily fluids for 47 analysis, or dental care performed with a local anesthetic, for which health care providers ordinarily do not seek specific consent from the 48 patient or authorized representative. It shall not include the long-term 49 50 provision of treatment such as ventilator support or a nasogastric tube 51 but shall include such treatment when provided as part of post-operative 52 care or in response to an acute illness and recovery is reasonably 53 expected within one month or less. 54 (b) An attending [physician or attending nurse] practitioner shall be authorized to decide about routine medical treatment for an adult 55 56 patient who has been determined to lack decision-making capacity pursu1 ant to section twenty-nine hundred ninety-four-c of this article. Noth-2 ing in this subdivision shall require health care providers to obtain 3 specific consent for treatment where specific consent is not otherwise 4 required by law.

5 4. Major medical treatment. (a) For purposes of this subdivision, б "major medical treatment" means any treatment, service or procedure to diagnose or treat an individual's physical or mental condition: (i) 7 8 where general anesthetic is used; or (ii) which involves any significant 9 risk; or (iii) which involves any significant invasion of bodily integ-10 rity requiring an incision, producing substantial pain, discomfort, debilitation or having a significant recovery period; or (iv) which 11 12 involves the use of physical restraints, as specified in regulations 13 promulgated by the commissioner, except in an emergency; or (v) which 14 involves the use of psychoactive medications, except when provided as 15 part of post-operative care or in response to an acute illness and 16 treatment is reasonably expected to be administered over a period of forty-eight hours or less, or when provided in an emergency. 17

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

22 (i) An attending [physician or attending nurse] practitioner shall 23 make a recommendation in consultation with hospital staff directly 24 responsible for the patient's care.

(ii) In a general hospital, at least one other physician [**or**], nurse practitioner <u>or physician assistant</u> designated by the hospital must independently determine that he or she concurs that the recommendation is appropriate.

29 (iii) In a residential health care facility, and for a hospice patient 30 not in a general hospital, the medical director of the facility or 31 hospice, or a physician [or], nurse practitioner or physician assistant 32 designated by the medical director, must independently determine that he 33 or she concurs that the recommendation is appropriate; provided that if 34 the medical director is the patient's attending [physician or attending 35 **nurse**] practitioner, a different physician [**or**], nurse practitioner **or** 36 physician assistant designated by the residential health care facility 37 or hospice must make this independent determination. Any health or 38 social services practitioner employed by or otherwise formally affil-39 iated with the facility or hospice may provide a second opinion for 40 decisions about physical restraints made pursuant to this subdivision.

41 5. Decisions to withhold or withdraw life-sustaining treatment. (a) A 42 court of competent jurisdiction may make a decision to withhold or with-43 draw life-sustaining treatment for an adult patient who has been deter-44 mined to lack decision-making capacity pursuant to section twenty-nine 45 hundred ninety-four-c of this article if the court finds that the deci-46 sion accords with standards for decisions for adults set forth in subdi-47 visions four and five of section twenty-nine hundred ninety-four-d of 48 this article.

(b) If the attending [physician or attending nurse] practitioner, with independent concurrence of a second physician [or], nurse practitioner <u>or physician assistant</u> designated by the hospital, determines to a reasonable degree of medical certainty that:

53 (i) life-sustaining treatment offers the patient no medical benefit 54 because the patient will die imminently, even if the treatment is 55 provided; and 1 (ii) the provision of life-sustaining treatment would violate accepted 2 medical standards, then such treatment may be withdrawn or withheld from 3 an adult patient who has been determined to lack decision-making capaci-4 ty pursuant to section twenty-nine hundred ninety-four-c of this arti-5 cle, without judicial approval. This paragraph shall not apply to any 6 treatment necessary to alleviate pain or discomfort.

7 5-a. Decisions regarding hospice care. An attending [physician or 8 attending nurse] practitioner shall be authorized to make decisions 9 regarding hospice care and execute appropriate documents for such deci-10 sions (including a hospice election form) for an adult patient under 11 this section who is hospice eligible in accordance with the following 12 requirements.

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

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

(i) in a general hospital, at least one other physician [**or**], nurse practitioner <u>or physician assistant</u> designated by the hospital must independently determine that he or she concurs that the recommendation is consistent with such standards for surrogate decisions;

(ii) in a residential health care facility, the medical director of 23 24 the facility, or a physician [**•**], nurse practitioner <u>or physician</u> 25 assistant designated by the medical director, must independently deter-26 mine that he or she concurs that the recommendation is consistent with 27 such standards for surrogate decisions; provided that if the medical director is the patient's attending [physician or attending nurse] prac-28 29 titioner, a different physician [or], nurse practitioner <u>or physician</u> 30 assistant designated by the residential health care facility must make 31 this independent determination; or

32 (iii) in settings other than a general hospital or residential health care facility, the medical director of the hospice, or a physician 33 designated by the medical director, must independently determine that he 34 35 she concurs that the recommendation is medically appropriate and or 36 consistent with such standards for surrogate decisions; provided that if 37 the medical director is the patient's attending physician, a different 38 physician designated by the hospice must make this independent determi-39 nation; and

(c) The ethics review committee of the general hospital, residential health care facility or hospice, as applicable, including at least one physician [or], nurse practitioner or physician assistant who is not the attending [physician or attending nurse] practitioner, or a court of competent jurisdiction, must review the decision and determine that it is consistent with such standards for surrogate decisions.

46 6. Physician [**er**], nurse practitioner <u>or physician assistant</u> 47 objection. If a physician [er], nurse practitioner or physician assist-48 ant consulted for a concurring opinion objects to an attending [physician's or attending nurse] practitioner's recommendation or determi-49 50 nation made pursuant to this section, or a member of the hospital staff 51 directly responsible for the patient's care objects to an attending 52 [physician's or attending nurse] practitioner's recommendation about 53 major medical treatment or treatment without medical benefit, the matter 54 shall be referred to the ethics review committee if it cannot be other-55 wise resolved.

A. 1162--A

1 § 28. Section 2994-j of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows: 2 § 2994-j. Revocation of consent. 1. A patient, surrogate, or parent or 3 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 б [physician, attending nurse] practitioner or a member of the medical or 7 nursing staff of the revocation. 2. An attending [physician or attending nurse] practitioner informed 8 9 of a revocation of consent made pursuant to this section shall imme-10 diately: 11 (a) record the revocation in the patient's medical record; 12 (b) cancel any orders implementing the decision to withhold or with-13 draw treatment; and 14 (c) notify the hospital staff directly responsible for the patient's 15 care of the revocation and any cancellations. 16 3. Any member of the medical or nursing staff, other than a nurse practitioner or physician assistant, informed of a revocation made 17 pursuant to this section shall immediately notify an attending [physi-18 19 **cian or attending nurse**] practitioner of the revocation. 20 § 29. The opening paragraph of subdivision 2 of section 2994-k of the 21 public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows: 22 23 If a decision to withhold or withdraw life-sustaining treatment has 24 been made pursuant to this article, and an attending [physician or 25 attending nurse] practitioner determines at any time that the decision 26 is no longer appropriate or authorized because the patient has regained 27 decision-making capacity or because the patient's condition has other-28 wise improved, the physician [or], nurse practitioner or physician 29 **assistant** shall immediately: 30 § 30. Section 2994-1 of the public health law, as amended by chapter 31 430 of the laws of 2017, is amended to read as follows: 32 § 2994-1. Interinstitutional transfers. If a patient with an order to 33 withhold or withdraw life-sustaining treatment is transferred from a mental hygiene facility to a hospital or from a hospital to a different 34 35 hospital, any such order or plan shall remain effective until an attend-36 [physician or attending nurse] practitioner first examines the ing 37 transferred patient, whereupon an attending [physician or attending 38 **nurse**] 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 Cancel such order, if the attending [physician or attending nurse] 43 practitioner determines that the order is no longer appropriate or authorized. Before canceling the order the attending [physician or 44 45 attending nurse] practitioner shall make reasonable efforts to notify 46 the person who made the decision to withhold or withdraw treatment and the hospital staff directly responsible for the patient's care of any 47 such cancellation. If such notice cannot reasonably be made prior to 48 canceling the order or plan, the attending [physician or attending 49 50 nurse] practitioner shall make such notice as soon as reasonably practicable after cancellation. 51 § 31. Subdivisions 3 and 4 of section 2994-m of the public health law, 52 53 as amended by chapter 430 of the laws of 2017, are amended to read as 54 follows: 55 3. Committee membership. The membership of ethics review committees 56 must be interdisciplinary and must include at least five members who

1 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 2 least three ethics review committee members must be health or social 3 4 services practitioners, at least one of whom must be a registered nurse 5 and one of whom must be a physician [or], nurse practitioner or physiб cian assistant. At least one member must be a person without any gover-7 nance, employment or contractual relationship with the hospital. In a 8 residential health care facility the facility must offer the residents' 9 council of the facility (or of another facility that participates in the 10 committee) the opportunity to appoint up to two persons to the ethics 11 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 12 13 have expertise in or a demonstrated commitment to patient rights or to 14 the care and treatment of the elderly or nursing home residents through 15 professional or community activities, other than activities performed as 16 a health care provider.

17 Procedures for ethics review committee. (a) These procedures are 4. required only when: (i) the ethics review committee is convened to 18 review a decision by a surrogate to withhold or withdraw life-sustaining 19 20 treatment for: (A) a patient in a residential health care facility 21 pursuant to paragraph (b) of subdivision five of section twenty-nine hundred ninety-four-d of this article; (B) a patient in a general hospi-22 tal pursuant to paragraph (c) of subdivision five of section twenty-nine 23 24 hundred ninety-four-d of this article; or (C) an emancipated minor patient pursuant to subdivision three of section twenty-nine hundred 25 26 ninety-four-e of this article; or (ii) when a person connected with the 27 case requests the ethics review committee to provide assistance in resolving a dispute about proposed care. Nothing in this section shall 28 bar health care providers from first striving to resolve disputes 29 30 through less formal means, including the informal solicitation of 31 ethical advice from any source.

32 (b)(i) A person connected with the case may not participate as an 33 ethics review committee member in the consideration of that case.

34 (ii) The ethics review committee shall respond promptly, as required 35 by the circumstances, to any request for assistance in resolving a 36 dispute or consideration of a decision to withhold or withdraw life-sus-37 taining treatment pursuant to paragraphs (b) and (c) of subdivision five 38 section twenty-nine hundred ninety-four-d of this article made by a of person connected with the case. The committee shall permit persons 39 connected with the case to present their views to the committee, and to 40 41 have the option of being accompanied by an advisor when participating in 42 a committee meeting.

43 (iii) The ethics review committee shall promptly provide the patient, 44 where there is any indication of the patient's ability to comprehend the 45 information, the surrogate, other persons on the surrogate list directly 46 involved in the decision or dispute regarding the patient's care, any 47 parent or guardian of a minor patient directly involved in the decision dispute regarding the minor patient's care, an attending [physician, 48 or an attending nurse] practitioner, the hospital, and other persons the 49 50 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

55 (B) the committee's response to the case, including a written state-56 ment of the reasons for approving or disapproving the withholding or

1 withdrawal of life-sustaining treatment for decisions considered pursu-2 ant to subparagraph (ii) of paragraph (a) of subdivision five of section twenty-nine hundred ninety-four-d of this article. The committee's 3 4 response to the case shall be included in the patient's medical record. 5 (iv) Following ethics review committee consideration of a case concerning the withdrawal or withholding of life-sustaining treatment, б 7 treatment shall not be withdrawn or withheld until the persons identi-8 fied in subparagraph (iii) of this paragraph have been informed of the 9 committee's response to the case. 10 (C) When an ethics review committee is convened to review decisions 11 regarding hospice care for a patient in a general hospital or residential health care facility, the responsibilities of this section shall be 12 13 carried out by the ethics review committee of the general hospital or 14 residential health care facility, provided that such committee shall 15 invite a representative from hospice to participate. 16 § 32. Paragraph (b) of subdivision 4 of section 2994-r of the public 17 health law, as amended by chapter 430 of the laws of 2017, is amended to 18 read as follows: 19 (b) The following persons may commence a special proceeding in a court 20 of competent jurisdiction to seek appointment as the health care guardi-21 an of a minor patient solely for the purpose of deciding about life-sustaining treatment pursuant to this article: 22 23 (i) the hospital administrator; (ii) an attending [physician or attending nurse] practitioner; 24 25 (iii) the local commissioner of social services or the local commis-26 sioner of health, authorized to make medical treatment decisions for the 27 minor pursuant to section three hundred eighty-three-b of the social services law; or 28 29 (iv) an individual, eighteen years of age or older, who has assumed 30 care of the minor for a substantial and continuous period of time. 31 § 33. Subdivision 1 of section 2994-s of the public health law, as 32 amended by chapter 430 of the laws of 2017, is amended to read as 33 follows: 1. Any hospital, attending [physician or nurse] practitioner that 34 35 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 36 shall not be entitled to compensation for treatment, services, or proce-37 dures refused by the surrogate, except that this subdivision shall not 38 39 apply: 40 (a) when a hospital, physician [or], nurse practitioner or physician 41 assistant exercises the rights granted by section twenty-nine hundred 42 ninety-four-n of this article, provided that the physician, nurse prac-43 titioner, physician assistant or hospital promptly fulfills the obli-44 gations set forth in section twenty-nine hundred ninety-four-n of this 45 article; 46 (b) while a matter is under consideration by the ethics review commit-47 tee, provided that the matter is promptly referred to and considered by 48 the committee; 49 (c) in the event of a dispute between individuals on the surrogate 50 list; or 51 (d) if the physician, nurse practitioner, physician assistant or hospital prevails in any litigation concerning the surrogate's decision 52 to refuse the treatment, services or procedure. Nothing in this section 53 54 shall determine or affect how disputes among individuals on the surro-55 gate list are resolved.

§ 34. Subdivision 2 of section 2994-aa of the public health law, 1 as 2 amended by chapter 430 of the laws of 2017, is amended to read as 3 follows: 4 "Attending [physician"] practitioner" means the physician, nurse 2. 5 practitioner or physician assistant who has primary responsibility for б the treatment and care of the patient. Where more than one physician 7 [or], nurse practitioner or physician assistant shares such responsibil-8 ity, any such physician [er], nurse practitioner or physician assistant may act as the attending [physician or attending nurse] practitioner 9 10 pursuant to this article. 11 § 35. Section 2994-cc of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows: 12 13 2994-cc. Consent to a nonhospital order not to resuscitate. 1. An S 14 adult with decision-making capacity, a health care agent, or a surrogate 15 may consent to a nonhospital order not to resuscitate orally to the 16 attending [physician or attending nurse] practitioner or in writing. If 17 a patient consents to a nonhospital order not to resuscitate while in a 18 correctional facility, notice of the patient's consent shall be given to 19 the facility director and reasonable efforts shall be made to notify an 20 individual designated by the patient to receive such notice prior to the 21 issuance of the nonhospital order not to resuscitate. Notification to the facility director or the individual designated by the patient shall 22 23 not delay issuance of a nonhospital order not to resuscitate. 24 2. Consent by a health care agent shall be governed by article twen-25 ty-nine-C of this chapter. 26 3. Consent by a surrogate shall be governed by article twenty-nine-CC 27 of this chapter, except that: (a) a second determination of capacity shall be made by a health or social services practitioner; and (b) the 28 authority of the ethics review committee set forth 29 in article 30 twenty-nine-CC of this chapter shall apply only to nonhospital orders 31 issued in a hospital. 32 4. (a) When the concurrence of a second physician [er], nurse practi-33 tioner or physician assistant is sought to fulfill the requirements for 34 the issuance of a nonhospital order not to resuscitate for patients in a 35 correctional facility, such second physician [or], nurse practitioner or 36 physician assistant shall be selected by the chief medical officer of 37 the department of corrections and community supervision or his or her 38 designee. 39 (b) When the concurrence of a second physician [or], nurse practition-40 er or physician assistant is sought to fulfill the requirements for the 41 issuance of a nonhospital order not to resuscitate for hospice and home 42 care patients, such second physician [er] _ nurse practitioner or physi-43 cian assistant shall be selected by the hospice medical director or hospice nurse coordinator designated by the medical director or by the 44 45 home care services agency director of patient care services, as appro-46 priate to the patient. 47 5. Consent by a patient or a surrogate for a patient in a mental hygiene facility shall be governed by article twenty-nine-B of 48 this 49 chapter. 50 § 36. Section 2994-dd of the public health law, as amended by chapter 51 430 of the laws of 2017, is amended to read as follows: 52 § 2994-dd. Managing a nonhospital order not to resuscitate. 1. The 53 attending [physician or attending nurse] practitioner shall record the 54 issuance of a nonhospital order not to resuscitate in the patient's 55 medical record.

1 2. A nonhospital order not to resuscitate shall be issued upon a standard form prescribed by the commissioner. The commissioner shall also 2 3 develop a standard bracelet that may be worn by a patient with a nonhos-4 pital order not to resuscitate to identify that status; provided, howev-5 er, that no person may require a patient to wear such a bracelet and б that no person may require a patient to wear such a bracelet as a condi-7 tion for honoring a nonhospital order not to resuscitate or for provid-8 ing health care services.

9 3. An attending [physician or attending nurse] practitioner who has
10 issued a nonhospital order not to resuscitate, and who transfers care of
11 the patient to another physician [er], nurse practitioner or physician
12 assistant, shall inform the physician [er], nurse practitioner or physi13 cian assistant of the order.

14 4. For each patient for whom a nonhospital order not to resuscitate 15 has been issued, the attending [physician or attending nurse] practi-16 tioner shall review whether the order is still appropriate in light of the patient's condition each time he or she examines the patient, wheth-17 er in the hospital or elsewhere, but at least every ninety days, 18 provided that the review need not occur more than once every seven days. 19 20 The attending [physician or attending nurse] practitioner shall record 21 the review in the patient's medical record provided, however, that a physician assistant or a registered nurse, other than the attending 22 nurse practitioner, who provides direct care to the patient may record 23 24 the review in the medical record at the direction of the physician. In 25 such case, the attending [physician or attending nurse] practitioner 26 shall include a confirmation of the review in the patient's medical 27 record within fourteen days of such review. Failure to comply with this 28 subdivision shall not render a nonhospital order not to resuscitate 29 ineffective.

30 5. A person who has consented to a nonhospital order not to resusci-31 tate may at any time revoke his or her consent to the order by any act 32 evidencing a specific intent to revoke such consent. Any health care professional, other than the attending [physician or attending nurse] 33 practitioner, informed of a revocation of consent to a nonhospital order 34 35 not to resuscitate shall notify the attending [physician or attending nurse] practitioner of the revocation. An attending [physician or 36 37 attending nurse practitioner who is informed that a nonhospital order 38 not to resuscitate has been revoked shall record the revocation in the patient's medical record, cancel the order and make diligent efforts to 39 40 retrieve the form issuing the order, and the standard bracelet, if any. 41 6. The commissioner may authorize the use of one or more alternative 42 forms for issuing a nonhospital order not to resuscitate (in place of 43 the standard form prescribed by the commissioner under subdivision two 44 of this section). Such alternative form or forms may also be used to 45 issue a non-hospital do not intubate order. Any such alternative forms 46 intended for use for persons with developmental disabilities or persons 47 with mental illness who are incapable of making their own health care decisions or who have a guardian of the person appointed pursuant to 48 article eighty-one of the mental hygiene law or article seventeen-A of 49 50 the surrogate's court procedure act must also be approved by the commis-51 sioner of developmental disabilities or the commissioner of mental health, as appropriate. An alternative form under this subdivision shall 52 53 otherwise conform with applicable federal and state law. This subdivi-54 sion does not limit, restrict or impair the use of an alternative form for issuing an order not to resuscitate in a general hospital or resi-55 56 dential health care facility under article twenty-eight of this chapter

1 or a hospital under subdivision ten of section 1.03 of the mental 2 hygiene law. § 37. Subdivision 2 of section 2994-ee of the public health law, as 3 4 amended by chapter 430 of the laws of 2017, is amended to read as 5 follows: б 2. Hospital emergency services physicians and hospital emergency 7 services nurse practitioners and physician assistants may direct that the order be disregarded if other significant and exceptional medical 8 9 circumstances warrant disregarding the order. § 38. This act shall take effect on the one hundred eightieth day 10 11 after it shall have become a law; provided, however that if chapter 342 of the laws of 2018 shall not have taken effect on or before such date, 12 then sections seventeen, eighteen, nineteen and twenty of this act shall 13 14 take effect on the same date and in the same manner as such chapter 342 15 of the laws of 2018, takes effect. Effective immediately, any rules and 16 regulations necessary to implement the provisions of this act on its 17 effective date are authorized and directed to be amended, repealed

18 and/or promulgated on or before such date.