

# STATE OF NEW YORK

5973--A

2019-2020 Regular Sessions

## IN ASSEMBLY

February 22, 2019

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

AN ACT to amend the public health law, in relation to making technical, minor and coordinating amendments regarding health care agents and proxies, decisions under the family health care decisions act, and nonhospital orders not to resuscitate

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

1 Section 1. Subdivision 10 of section 2980 of the public health law, as  
2 amended by chapter 23 of the laws of 1994, is amended to read as  
3 follows:

4 10. "Mental hygiene facility" means a residential facility, excluding  
5 family care homes, operated or licensed by the office of mental health  
6 or the office [~~of mental retardation and~~] for people with developmental  
7 disabilities.

8 § 2. Paragraph (b) of subdivision 1 of section 2981 of the public  
9 health law, as added by chapter 752 of the laws of 1990, is amended to  
10 read as follows:

11 (b) For the purposes of this section, every adult shall be presumed  
12 competent to appoint a health care agent unless such person has been  
13 adjudged incompetent or otherwise adjudged not competent to appoint a  
14 health care agent, or unless a [~~committee or~~] guardian of the person has  
15 been appointed for the adult pursuant to article [~~seventy-eight~~] eight-  
16 y-one of the mental hygiene law or article seventeen-A of the surro-  
17 gate's court procedure act.

18 § 3. Subdivision 2 of section 2982 of the public health law, as  
19 amended by chapter 230 of the laws of 2004, is amended to read as  
20 follows:

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

LBD09564-02-9

2. Decision-making standard. After consultation with a licensed physician, registered nurse, physician assistant, nurse practitioner, licensed psychologist, licensed master social worker, or a licensed clinical social worker, the agent shall make health care decisions: (a) in accordance with the principal's wishes, including the principal's religious and moral beliefs; or (b) if the principal's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal's best interests; provided, however, that if the principal's wishes regarding the administration of artificial nutrition and hydration are not reasonably known and cannot with reasonable diligence be ascertained, the agent shall not have the authority to make decisions regarding these measures.

§ 4. Subdivision 3 of section 2983 of the public health law, as amended by chapter 342 of the laws of 2018, is amended to read as follows:

3. Notice of determination. Notice of a determination that a principal lacks capacity to make health care decisions shall promptly be given: (a) to the principal, orally and in writing, where there is any indication of the principal's ability to comprehend such notice; (b) to the agent; (c) if the principal is in or is transferred from a mental hygiene facility, to the facility director; and (d) to the ~~[conservator for, or committee of, the principal]~~ guardian, if any.

§ 5. Subdivision 2 of section 2991 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

2. Such procedures shall be established in accordance with regulations issued by the commissioners of health, mental health, and ~~[mental retardation and]~~ developmental disabilities for facilities subject to their respective regulatory authorities.

§ 6. The opening paragraph of section 2992 of the public health law, as amended by chapter 93 of the laws of 2014, is amended to read as follows:

The health care provider~~[, the conservator for, or committee]~~ of the principal under article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act, members of the principal's family, a close friend of the principal as defined in subdivision ~~[five]~~ four of section ~~[two thousand nine]~~ twenty-nine hundred ~~[sixty-one]~~ ninety-four-a of this chapter, or the commissioner ~~[of health]~~, the commissioner of mental health, or the commissioner of developmental disabilities 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, including, but not limited to, a proceeding to:

§ 7. Section 2993 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

§ 2993. Regulations. The commissioner ~~[of health]~~, in consultation with the commissioners of ~~[the office of]~~ mental health and ~~[the office of mental retardation and]~~ developmental disabilities, shall establish such regulations as may be necessary for the implementation of this article, subject to the provisions of subdivision two of section ~~[two thousand nine]~~ twenty-nine hundred ninety-one of this article.

§ 8. Subdivisions 17, 20 and 26 of section 2994-a of the public health law, as added by chapter 8 of the laws of 2010, are amended to read as follows:

17. "Health or social ~~[service]~~ services practitioner" means a registered professional nurse, nurse practitioner, physician, physician assistant, psychologist, licensed master social worker or licensed clin-

1 ical social worker, licensed or certified pursuant to the education law  
2 acting within his or her scope of practice.

3 20. "Mental hygiene facility" means a facility operated or licensed by  
4 the office of mental health or the office [~~of mental retardation and~~  
5 for people with developmental disabilities as defined in subdivision six  
6 of section 1.03 of the mental hygiene law.

7 26. "Person connected with the case" means the patient, any person on  
8 the surrogate list, a parent or guardian of a minor patient, [~~the~~] a  
9 hospital administrator, an attending physician, any other health or  
10 social services practitioner who is or has been directly involved in the  
11 patient's care, and any duly authorized state agency, including the  
12 facility director or regional director for a patient transferred from a  
13 mental hygiene facility and the facility director for a patient trans-  
14 ferred from a correctional facility.

15 § 9. The opening paragraph of subdivision 3 of section 2994-b of the  
16 public health law, as amended by chapter 430 of the laws of 2017, is  
17 amended to read as follows:

18 Prior to seeking or relying upon a health care decision by a surrogate  
19 for a patient under this article, if the attending physician or attend-  
20 ing nurse practitioner has reason to believe that the patient has a  
21 history of receiving services for [~~mental retardation or~~] a develop-  
22 mental disability; it reasonably appears to the attending physician or  
23 attending nurse practitioner that the patient has [~~mental retardation~~  
24 ~~or~~] a developmental disability; or the attending physician or attending  
25 nurse practitioner has reason to believe that the patient has been  
26 transferred from a mental hygiene facility operated or licensed by the  
27 office of mental health, then such physician or nurse practitioner shall  
28 make reasonable efforts to determine whether paragraphs (a), (b) or (c)  
29 of this subdivision are applicable:

30 § 10. Subdivision 3 of section 2994-e of the public health law, as  
31 amended by chapter 430 of the laws of 2017, is amended to read as  
32 follows:

33 3. Decision-making standards and procedures for emancipated minor  
34 patient. (a) If an attending physician or attending nurse practitioner  
35 determines that a patient is an emancipated minor patient with deci-  
36 sion-making capacity and documents the basis for such determination in  
37 the patient's medical record, the patient shall have the authority to  
38 decide about life-sustaining treatment. Such authority shall include a  
39 decision to withhold or withdraw life-sustaining treatment if an attend-  
40 ing physician or attending nurse practitioner and the ethics review  
41 committee determine that the decision accords with the standards for  
42 surrogate decisions for adults, and the ethics review committee approves  
43 the decision.

44 (b) If the hospital can with reasonable efforts ascertain the identity  
45 of the parents or guardian of an emancipated minor patient, the hospital  
46 shall make diligent efforts to notify such persons, and document such  
47 diligent efforts in the patient's medical record, prior to withholding  
48 or withdrawing life-sustaining treatment pursuant to this subdivision.

49 § 11. Subparagraph (iv) of paragraph (b) of subdivision 4 of section  
50 2994-m of the public health law, as amended by chapter 430 of the laws  
51 of 2017, is amended to read as follows:

52 (iv) Following ethics review committee consideration of a case  
53 concerning the withdrawal or withholding of life-sustaining treatment,  
54 treatment shall not be withdrawn or withheld until the hospital makes  
55 diligent efforts to inform the persons identified in subparagraph (iii)  
56 of this paragraph [~~have been informed~~] of the committee's response to

1 the case and documents such diligent efforts in the patient's medical  
2 record.

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

5 2. The commissioner, in consultation with the commissioners of [~~the~~  
6 ~~office of~~] mental health and [~~the office of mental retardation and~~  
7 developmental disabilities, shall promulgate regulations identifying the  
8 credentials of health care professionals qualified to provide an inde-  
9 pendent determination, pursuant to subdivision three of section twenty-  
10 nine hundred ninety-four-c of this article, that a patient lacks deci-  
11 sion-making capacity because of mental illness or developmental  
12 disability.

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

15 § 2994-u. Rights to be publicized. The commissioner shall prepare a  
16 statement summarizing the rights, duties, and requirements of this arti-  
17 cle and shall require that a copy of such statement be furnished to  
18 [~~patients~~] a patient or to [~~persons on~~] the surrogate [~~list known to the~~  
19 ~~hospital~~], or to the [~~parents or guardians~~] parent or guardian of a  
20 minor [~~patients~~] patient, at or prior to admission to the hospital, or  
21 within a reasonable time thereafter, and to [~~each member of the hospi-~~  
22 ~~tal's staff directly involved with patient care~~] any person on the  
23 surrogate list who requests a copy of such statement from the hospital.  
24 The statement shall also be made available to the hospital clinical  
25 staff.

26 § 14. The commissioner of health shall revise the statement of rights  
27 that hospitals are required to post (known as the Patient's Bill of  
28 Rights) pursuant to paragraph (g) of subdivision 1 of section 2803 of  
29 the public health law, by replacing the clause regarding orders not to  
30 resuscitate with a statement that more generally informs patients of  
31 their right to receive from the hospital upon admission, and upon  
32 request, a more complete statement of their rights with respect to  
33 deciding about health care, including appointing a health care agent,  
34 consenting to do-not-resuscitate orders and making other life-sustaining  
35 treatment decisions. The clause should also state in substance that the  
36 hospital will also provide such statement upon request to any family  
37 member or friend of a patient who lacks decision-making capacity.

38 § 15. Subdivisions 12 and 13 of section 2994-aa of the public health  
39 law, subdivision 12 as added by chapter 8 of the laws of 2010 and subdi-  
40 vision 13 as amended by chapter 167 of the laws of 2011, are amended to  
41 read as follows:

42 12. "Mental hygiene facility" means a residential facility operated or  
43 licensed by the office of mental health [~~or the office of mental retar-~~  
44 ~~dation and developmental disabilities~~].

45 13. "Nonhospital order not to resuscitate" means an order that directs  
46 emergency medical services personnel, hospice personnel, home care  
47 services agency personnel and hospital emergency services personnel not  
48 to attempt cardiopulmonary resuscitation in the event a patient suffers  
49 cardiac or respiratory arrest.

50 § 16. Subdivisions 2 and 6 of section 2994-dd of the public health  
51 law, as amended by chapter 430 of the laws of 2017, are amended to read  
52 as follows:

53 2. A nonhospital order not to resuscitate shall be issued upon a stan-  
54 dard form prescribed by the commissioner. [~~The commissioner shall also~~  
55 ~~develop a~~] A standard bracelet [~~that~~] or other article may be worn by a  
56 patient with a nonhospital order not to resuscitate to identify that

1 status; provided, however, that no person may require a patient to wear  
2 such a bracelet or other article and that no person may require a  
3 patient to wear such a bracelet as a condition for honoring a nonhospi-  
4 tal order not to resuscitate or for providing health care services.

5 6. The commissioner may authorize the use of one or more alternative  
6 forms for issuing a nonhospital order not to resuscitate (in place of  
7 the standard form prescribed by the commissioner under subdivision two  
8 of this section). Such alternative form or forms may also be used to  
9 issue a non-hospital do not intubate order. Any such alternative forms  
10 intended for use for persons with developmental disabilities or persons  
11 with mental illness who are incapable of making their own health care  
12 decisions or who have a guardian of the person appointed pursuant to  
13 article eighty-one of the mental hygiene law or article seventeen-A of  
14 the surrogate's court procedure act must also be approved by the commis-  
15 sioner of developmental disabilities or the commissioner of mental  
16 health, as appropriate. An alternative form under this subdivision shall  
17 otherwise conform with applicable federal and state law. This subdivi-  
18 sion does not limit, restrict or impair the use of an alternative form  
19 for issuing an order not to resuscitate in a general hospital or resi-  
20 dential health care facility under article twenty-eight of this chapter  
21 or a hospital under subdivision ten of section 1.03 of the mental  
22 hygiene law or a developmental disabilities services office under  
23 section 13.17 of the mental hygiene law.

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

26 § 2994-gg. Immunity. No person shall be subjected to criminal prose-  
27 cution or civil liability, or be deemed to have engaged in unprofes-  
28 sional conduct, for honoring reasonably and in good faith pursuant to  
29 this [~~section~~] article a nonhospital order not to resuscitate, for  
30 disregarding a nonhospital order pursuant to section twenty-nine hundred  
31 ninety-four-ee of this article, or for other actions taken reasonably  
32 and in good faith pursuant to this [~~section~~] article.

33 § 18. This act shall take effect on the ninetieth day after it shall  
34 have become a law, provided that the amendments to article 29-C of the  
35 public health law shall apply to decisions made pursuant to health care  
36 proxies created prior to the effective date of this act as well as those  
37 created thereafter.