STATE OF NEW YORK

5940

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Following ethics review committee consideration of a case concerning the withdrawal or withholding of life-sustaining treatment, treatment shall not be withdrawn or withheld until **the hospital makes diligent efforts to inform** the persons identified in subparagraph (iii) of this paragraph [~~have been informed~~] of the committee's response to the case **and documents such diligent efforts in the patient's medical record**.

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

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

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

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

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

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

12. "Mental hygiene facility" means a residential facility operated or licensed by the office of mental health [~~or the office of mental retardation and developmental disabilities~~].

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

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

2. A nonhospital order not to resuscitate shall be issued upon a standard form prescribed by the commissioner. [~~The commissioner shall also develop a~~] **A** standard bracelet [~~that~~] **or other article** may be worn by a patient with a nonhospital order not to resuscitate to identify that status; provided, however, that no person may require a patient to wear such a bracelet **or other article** and that no person may require a

patient to wear such a bracelet as a condition for honoring a nonhospital order not to resuscitate or for providing health care services.

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

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

§ 2994-gg. Immunity. No person shall be subjected to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith pursuant to this [~~section~~] **article** a nonhospital order not to resuscitate, for disregarding a nonhospital order pursuant to section twenty-nine hundred ninety-four-ee of this article, or for other actions taken reasonably and in good faith pursuant to this [~~section~~] **article**.

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