STATE OF NEW YORK

1162

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

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:

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

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

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

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

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

LBD03858-02-9

the attending [~~physician or attending nurse~~] practitioner pursuant to this article.

5. "Close friend" means any person, eighteen years of age or older, who is a close friend of the patient, or 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.

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

§ 3. Subdivision 2-a of section 2961 of the public health law is REPEALED.

§ 4. Subdivisions 2 and 3 of section 2962 of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

2. It shall be lawful for the attending [~~physician or attending nurse~~] practitioner to issue an order not to resuscitate a patient, provided 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. An order not to resuscitate shall be effective upon issuance.

3. Before obtaining, pursuant to this article, the consent of the patient, or of the surrogate of the patient, or parent or legal guardian of the minor patient, to an order not to resuscitate, the attending [~~physician or attending nurse~~] practitioner shall provide to the person giving consent information about the patient's diagnosis and prognosis, the reasonably foreseeable risks and benefits of cardiopulmonary resuscitation for the patient, and the consequences of an order not to resuscitate.

§ 5. Section 2963 of the public health law, as amended by chapter 430 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 the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise pursuant to this section or pursuant to a court order or unless a guardian is authorized to decide about health care for the adult pursuant to article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act. The attending [~~physician or attending nurse~~] practitioner shall not rely on the presumption stated in this subdivision if clinical indicia of incapacity are present.

2. A determination that an adult patient lacks capacity shall be made by the attending [~~physician or attending nurse~~] practitioner to a reasonable degree of medical certainty. The determination shall be made in writing and shall contain such attending [~~physician's or attending nurse~~] practitioner's opinion regarding the cause and nature of the patient's incapacity as well as its extent and probable duration. The determination shall be included in the patient's medical chart.

3. (a) At least one other physician, selected by a person authorized by the hospital to make such selection, must concur in the determination that an adult lacks capacity. The concurring determination shall be made in writing after personal examination of the patient and shall contain the physician's opinion regarding the cause and nature of the patient's

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

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

(c) If the attending [~~physician or attending nurse~~] practitioner determines that a patient lacks capacity because of a developmental disability, the concurring determination required by paragraph (a) of this subdivision shall be provided by a physician or psychologist employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or who 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 psychologist possess specialized training or three years experience in treating developmental disabilities.

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

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

2. (a) During hospitalization, an adult with capacity may express a decision consenting to an order not to resuscitate orally in the presence of at least two witnesses eighteen years of age or older, one of whom is a physician [~~or~~]**,** nurse practitioner**, or physician assistant** affiliated with the hospital in which the patient is being treated. Any 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.

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

(i) promptly issue an order not to resuscitate the patient or issue an 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 care of the order; or

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

(d) Prior to issuing an order not to resuscitate a patient who has expressed a decision consenting to an order not to resuscitate under specified medical conditions, the attending [~~physician or attending nurse~~] practitioner must make a determination, to a reasonable degree of medical certainty, that such conditions exist, and include the determination in the patient's medical chart.

§ 7. Subdivisions 3 and 4 of section 2965 of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

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

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

(c) A surrogate may consent to an order not to resuscitate on behalf of an adult patient only if there has been a determination by an attending [~~physician or attending nurse~~] practitioner with the concurrence of another physician [~~or~~], nurse practitioner **or physician assistant** selected by a person authorized by the hospital to make such selection, given after personal examination of the patient that, to a reasonable degree of medical certainty:

(i) the patient has a terminal condition; or

(ii) the patient is permanently unconscious; or

(iii) resuscitation would be medically futile; or

(iv) resuscitation would impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the patient.

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

4. (a) A surrogate shall express a decision consenting to an order not to resuscitate either (i) in writing, dated, and signed in the presence of one witness eighteen years of age or older who shall sign the decision, or (ii) orally, to two persons eighteen years of age or older, one of whom is a physician [~~or~~], nurse practitioner **or physician assistant** affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

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

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

(ii) promptly make the attending [~~physician's or attending nurse~~] practitioner's objection to the issuance of such an order known to the surrogate and either make all reasonable efforts to arrange for the transfer of the patient to another physician [~~or~~], nurse practitioner **or**

physician assistant, if necessary, or promptly refer the matter to the dispute mediation system.

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

§ 8. Section 2966 of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

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

§ 9. Section 2967 of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

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

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

3. A parent or legal guardian may consent to an order not to resuscitate on behalf of a minor only if there has been a written determination by the attending [~~physician or attending nurse~~] practitioner, with the

written concurrence of another physician [~~or~~], nurse practitioner **or physician assistant** selected by a person authorized by the hospital to make such selections given after personal examination of the patient, that, to a reasonable degree of medical certainty, the minor suffers from one of the medical conditions set forth in paragraph (c) of subdivision three of section twenty-nine hundred sixty-five of this article. Each determination shall be included in the patient's medical chart.

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

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

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

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

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

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

3. Any physician [~~or~~], nurse practitioner **or physician assistant** who is informed of or provided with a revocation of consent pursuant to this section shall immediately include the revocation in the patient's chart, cancel the order, and notify the hospital staff responsible for the patient's care of the revocation and cancellation. Any member of the nursing staff, other than a nurse practitioner **or physician assistant**, who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify a physician [~~or~~], nurse practitioner **or physician assistant** of such revocation.

§ 11. Section 2970 of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

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

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

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

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

§ 12. The opening paragraph and subdivision 2 of section 2971 of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

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

2. Cancel the order not to resuscitate, provided the attending [~~physician or attending nurse~~] practitioner immediately notifies the person who consented to the order and the hospital staff directly responsible for the patient's care of the cancellation. Such cancellation does not preclude the entry of a new order pursuant to this article.

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

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

(b) The dispute mediation system shall be described in writing and adopted by the hospital's governing authority. It may utilize existing hospital resources, such as a patient advocate's office or hospital chaplain's office, or it may utilize a body created specifically for this purpose, but, in the event a dispute involves a patient deemed to lack capacity pursuant to (i) paragraph (b) of subdivision three of section twenty-nine hundred sixty-three of this article, the system must include a physician [~~or~~], nurse practitioner **or physician assistant** eligible to provide a concurring determination pursuant to such subdivision, 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 subdivision three of section twenty-nine hundred sixty-three of this article, the system must include a physician [~~or~~], nurse practitioner **or physician assistant** eligible to provide a concurring determination pursuant to such subdivision, or a family member or guardian of the person of a person with a developmental disability of the same or similar nature.

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

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

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

(b) seventy-two hours have elapsed from the time of submission without resolution of the dispute, whichever shall occur first, the attending [~~physician or attending nurse~~] practitioner shall either: (i) promptly issue an order not to resuscitate the patient or issue the 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 care of the order; or (ii) promptly arrange for the transfer of the patient to another physician, nurse practitioner**, physician assistant** or hospital.

§ 14. Subdivision 1 of section 2973 of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as 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 to judicial review. In any proceeding brought pursuant to this subdivision challenging a decision regarding issuance of an order not to resuscitate on the ground that the decision is contrary to the patient's wishes or best interests, the person or entity challenging the decision must show, by clear and convincing evidence, that the decision is contrary to the patient's wishes including consideration of the patient's religious and moral beliefs, or, in the absence of evidence of the patient's wishes, that the decision is contrary to the patient's best interests. In any other proceeding brought pursuant to this subdivision, the court shall make its determination based upon the applicable substantive standards and procedures set forth in this article.

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

§ 2976. Judicially approved order not to resuscitate. 1. If no surrogate is reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate on behalf of an adult patient who lacks capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation pursuant to this article, an attending [~~physician or attending nurse~~] practitioner or hospital may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, for a judgment directing the physician [~~or~~], nurse practitioner **or physician assistant** to issue an order not to resuscitate where the patient has a terminal condition, is permanently unconscious, or resuscitation would impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the patient, and issuance of an order not to resuscitate is consistent with the patient's wishes including a consideration of the patient's religious and moral beliefs or, in the absence of evidence of the patient's wishes, the patient's best interests.

2. Nothing in this article shall be construed to preclude a court of competent jurisdiction from approving the issuance of an order not to resuscitate under circumstances other than those under which such an 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:

2. "Attending [~~physician~~] **practitioner**" means the physician, **physician assistant, or nurse practitioner, licensed or certified pursuant to title eight of the education law,** selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. Where more than one physician**, physician assistant, or nurse practitioner** shares such responsibility, or where a physician**, physician assistant, or nurse practitioner** is acting on the attending [~~physician's~~] **practitioner's** behalf, any such physician**, nurse practitioner, or physician assistant** may act as the attending [~~physician~~] **practitioner** 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~~] practitioner.

13. "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending [~~physician~~] practitioner or another person acting on behalf of the attending [~~physician~~] practitioner or the hospital.

§ 17. Subdivision 2-c of section 2980 of the public health law is REPEALED.

§ 18. Subdivisions 2, 3 and 6 of section 2981 of the public health law, as amended by chapter 342 of the laws of 2018, are amended to read as follows:

2. Health care proxy; execution; witnesses. (a) A competent adult may appoint a health care agent by a health care proxy, signed and dated by the adult in the presence of two adult witnesses who shall also sign the proxy. Another person may sign and date the health care proxy for the adult if the adult is unable to do so, at the adult's direction and in the adult's presence, and in the presence of two adult witnesses who shall sign the proxy. The witnesses shall state that the principal appeared to execute the proxy willingly and free from duress. The person appointed as agent shall not act as witness to execution of the health care proxy.

(b) For persons who reside in a mental hygiene facility operated or licensed by the office of mental health, at least one witness shall be an individual who is not affiliated with the facility and, if the mental hygiene facility is also a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, at least one witness shall be a qualified psychiatrist or psychiatric nurse practitioner.

(c) For persons who reside in a mental hygiene facility operated or licensed by the office for people with developmental disabilities, at least one witness shall be an individual who is not affiliated with the facility and at least one witness shall be a physician, nurse practitioner, physician assistant or clinical psychologist who either is employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or has been approved by the commissioner of developmental disabilities in accordance with regulations approved by the commissioner. Such regulations shall require that a physician, nurse practitioner, physician assistant, or clinical psychologist possess specialized training or three years experience in treating developmental disabilities.

3. Restrictions on who may be and limitations on a health care agent. (a) An operator, administrator or employee of a hospital may not be appointed as a health care agent by any person who, at the time of the appointment, is a patient or resident of, or has applied for admission to, such hospital.

(b) The restriction in paragraph (a) of this subdivision shall not apply to:

(i) an operator, administrator or employee of a hospital who is related to the principal by blood, marriage or adoption; or

(ii) a physician, physician assistant, or nurse practitioner, subject to the limitation set forth in paragraph (c) of this subdivision, except that no physician or nurse practitioner affiliated with a mental hygiene facility or a psychiatric unit of a general hospital may serve as agent for a principal residing in or being treated by such facility or unit

unless the physician is related to the principal by blood, marriage or adoption.

(c) If a physician, physician assistant, or nurse practitioner is appointed agent, the physician, physician assistant, or nurse practitioner shall not act as the patient's attending [~~physician or attending nurse~~] practitioner after the authority under the health care proxy commences, unless the physician, physician assistant, or nurse practitioner declines the appointment as agent at or before such time.

(d) No person who is not the spouse, child, parent, brother, sister or 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 appointment, he or she is presently appointed health care agent for ten principals.

6. Alternate agent. (a) A competent adult may designate an alternate agent in the health care proxy to serve in place of the agent when:

(i) the attending [~~physician or attending nurse~~] practitioner has determined in a writing signed by the physician, physician assistant, or nurse practitioner (A) that the person appointed as agent is not reasonably available, willing and competent to serve as agent, and (B) that such person is not expected to become reasonably available, willing and competent to make a timely decision given the patient's medical circumstances;

(ii) the agent is disqualified from acting on the principal's behalf pursuant to subdivision three of this section or subdivision two of section two thousand nine hundred ninety-two of this article, or

(iii) under conditions set forth in the proxy.

(b) If, after an alternate agent's authority commences, the person appointed as agent becomes available, willing and competent to serve as agent:

(i) the authority of the alternate agent shall cease and the authority of the agent shall commence; and

(ii) the attending [~~physician or attending nurse~~] practitioner shall record the change in agent and the reasons therefor in the principal's medical record.

§ 19. Subdivisions 1, 2, 6 and 7 of section 2983 of the public health law, as amended by chapter 342 of the laws of 2018, are amended to read as follows:

1. Determination by attending [~~physician or attending nurse~~] practitioner. (a) A determination that a principal lacks capacity to make health care decisions shall be made by the attending [~~physician or attending nurse~~] practitioner to a reasonable degree of medical certainty. The determination shall be made in writing and shall contain such attending [~~physician's or attending nurse~~] practitioner's opinion regarding the cause and nature of the principal's incapacity as well as its extent and probable duration. The determination shall be included in the patient's medical record. For a decision to withdraw or withhold life-sustaining treatment, the attending [~~physician or attending nurse~~] practitioner who makes the determination that a principal lacks capacity to make health care decisions must consult with another physician, physician assistant, or nurse practitioner to confirm such determination. Such consultation shall also be included within the patient's medical record.

(b) If an attending [~~physician or attending nurse~~] practitioner of a patient in a general hospital or mental hygiene facility determines that a patient lacks capacity because of mental illness, the attending [~~physician or attending nurse~~] practitioner who makes the determination

must be, or must consult, for the purpose of confirming the determination, with a qualified psychiatrist. A record of such consultation shall be included in the patient's medical record.

(c) If the attending [~~physician or attending nurse~~] practitioner determines that a patient lacks capacity because of a developmental disability, the attending [~~physician or attending nurse~~] practitioner who makes the determination must be, or must consult, for the purpose of confirming the determination, with a physician, nurse practitioner**, physician assistant,** or clinical psychologist who either is employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or has been approved by the commissioner of developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician, nurse practitioner**, physician assistant,** or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

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

2. Request for a determination. If requested by the agent, an attending [~~physician or attending nurse~~] practitioner shall make a determination regarding the principal's capacity to make health care decisions 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.

(b) The notice requirements set forth in subdivision three of this section shall not apply to the confirmation required by this subdivision.

7. Effect of recovery of capacity. In the event the attending [~~physician or attending nurse~~] practitioner determines that the principal has regained capacity, the authority of the agent shall cease, but shall recommence if the principal subsequently loses capacity as determined pursuant to this section.

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

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

(b) Any member of the staff of a health care provider informed of or provided with a revocation of a health care proxy pursuant to this section shall immediately notify a physician**, physician assistant,** or nurse practitioner of such revocation.

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

2. "Attending physician" means a physician, selected by or assigned to a patient pursuant to hospital policy, who has primary responsibility for the treatment and care of the patient. Where more than one physician [~~and/or~~], nurse practitioner **or physician assistant** shares such responsibility, 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 physician assistant** may act as an attending [~~physician or attending 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.

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

2. Prior to seeking or relying upon a health care decision by a surrogate for a patient under this article, the attending [~~physician or attending nurse~~] practitioner shall make reasonable efforts to determine whether the patient has a health care agent appointed pursuant to article twenty-nine-C of this chapter. If so, health care decisions for the patient shall be governed by such article, and shall have priority over decisions by any other person except the patient or as otherwise provided in the health care proxy.

3. 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 **or physician assistant** shall make reasonable efforts to determine whether 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.

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

§ 23. Subdivisions 2, 3 and 7 of section 2994-c of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

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

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

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

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

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

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

(ii) If the attending [~~physician or attending nurse~~] practitioner makes an initial determination that a patient lacks decision-making capacity because of a developmental disability, either such physician [~~or~~]~~,~~ nurse practitioner **or physician assistant** must have the following qualifications, or another professional with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician or clinical psychologist who either is employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or has been approved by the commissioner of developmental disabilities in

accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

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

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

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

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

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

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

(ii) Nothing in this article shall obligate health care providers to seek the consent of a surrogate if an adult patient has already made a decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining treatment expressed either orally during hospitalization in the presence of two witnesses eighteen years of age or older, at least one of whom is a health or social services practitioner affiliated with the hospital, or in writing. If an attending [~~physician or attending nurse~~] practitioner relies on the patient's prior decision, the physician [~~or~~], nurse practitioner **or physician assistant** shall record the prior decision in the patient's medical record. If a surrogate has already been designated for the patient, the attending [~~physician or attending nurse~~] practitioner shall make reasonable efforts to notify the surrogate prior to implementing the decision; provided that in the case of a decision to

withdraw or withhold life-sustaining treatment, the attending [~~physician or attending nurse~~] practitioner shall make diligent efforts to notify the surrogate and, if unable to notify the surrogate, shall document the efforts that were made to do so.

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

(c) Right and duty to be informed. Notwithstanding any law to the contrary, the surrogate shall have the right to receive medical information and medical records necessary to make informed decisions about the patient's health care. Health care providers shall provide and the surrogate shall seek information necessary to make an informed decision, including information about the patient's diagnosis, prognosis, the nature and consequences of proposed health care, and the benefits and 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:

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

(ii) The provision of treatment would involve such pain, suffering or other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances and the patient has an irreversible or incurable condition, as determined by an attending [~~physician or attending nurse~~] practitioner with the independent concurrence of another physician [~~or~~], nurse practitioner **or physician assistant** to a reasonable degree of medical certainty and in accord with accepted medical standards.

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

(c) In a general hospital, if the attending [~~physician or attending nurse~~] practitioner objects to a surrogate's decision, under subparagraph (ii) of paragraph (a) of this subdivision, to withdraw or withhold nutrition and hydration provided by means of medical treatment, the decision shall not be implemented until the ethics review committee, including at least one physician [~~or~~], nurse practitioner **or physician**

assistant who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and determines that it meets the standards set forth in this subdivision and subdivision four of this section.

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

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

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

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

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

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

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

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

§ 26. Section 2994-f of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

§ 2994-f. Obligations of attending [~~physician or attending nurse~~] practitioner. 1. An attending [~~physician or attending nurse~~] practitioner informed of a decision to withdraw or withhold life-sustaining treatment made pursuant to the standards of this article shall record the

decision in the patient's medical record, review the medical basis for the decision, and shall either: (a) implement the decision, or (b) promptly make his or her objection to the decision and the reasons for the objection known to the decision-maker, and either make all reasonable efforts to arrange for the transfer of the patient to another physician [~~or~~], nurse practitioner or physician assistant, if necessary, or promptly refer the matter to the ethics review committee.

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

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

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

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

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

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

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

§ 27. Subdivisions 3, 4, 5, 5-a and 6 of section 2994-g of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

3. Routine medical treatment. (a) For purposes of this subdivision, "routine medical treatment" means any treatment, service, or procedure to diagnose or treat an individual's physical or mental condition, such as the administration of medication, the extraction of bodily fluids for analysis, or dental care performed with a local anesthetic, for which health care providers ordinarily do not seek specific consent from the patient or authorized representative. It shall not include the long-term provision of treatment such as ventilator support or a nasogastric tube but shall include such treatment when provided as part of post-operative care or in response to an acute illness and recovery is reasonably expected within one month or less.

(b) An attending [~~physician or attending nurse~~] practitioner shall be authorized to decide about routine medical treatment 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. Nothing in this subdivision shall require health care providers to obtain

specific consent for treatment where specific consent is not otherwise required by law.

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

(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.

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

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

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

5. Decisions to withhold or withdraw life-sustaining treatment. (a) A court of competent jurisdiction may make a decision to withhold or withdraw life-sustaining treatment 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 if the court finds that the decision accords with standards for decisions for adults set forth in subdivisions four and five of section twenty-nine hundred ninety-four-d of this article.

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

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

(ii) the provision of life-sustaining treatment would violate accepted medical standards, then such treatment may be withdrawn or withheld from an adult patient who has been determined to lack decision-making capaci-

ty pursuant to section twenty-nine hundred ninety-four-c of this article, without judicial approval. This paragraph shall not apply to any treatment necessary to alleviate pain or discomfort.

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

(b) There is a concurring opinion as follows:

(i) in a general hospital, at least one other physician [~~or~~], nurse practitioner **or physician assistant** 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 the facility, or a physician [~~or~~], nurse practitioner **or physician assistant** designated by the medical director, must independently determine that he or she concurs that the recommendation is consistent with such standards for surrogate decisions; provided that if the medical director is the patient's attending [~~physician or attending nurse~~] practitioner, a different physician [~~or~~], nurse practitioner **or physician assistant** designated by the residential health care facility must make this independent determination; or

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

6. Physician [~~or~~], nurse practitioner **or physician assistant** objection. If a physician [~~or~~], nurse practitioner **or physician assistant** consulted for a concurring opinion objects to an attending [~~physician's or attending nurse~~] practitioner's recommendation or determination made pursuant to this section, or a member of the hospital staff directly responsible for the patient's care objects to an attending [~~physician's or attending nurse~~] practitioner's recommendation about major medical treatment or treatment without medical benefit, the matter shall be referred to the ethics review committee if it cannot be otherwise resolved.

§ 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:

§ 2994-j. Revocation of consent. 1. A patient, surrogate, or parent or guardian of a minor patient may at any time revoke his or her consent to

withhold or withdraw life-sustaining treatment by informing an attending [~~physician, attending nurse~~] practitioner or a member of the medical or nursing staff of the revocation.

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

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

(b) cancel any orders implementing the decision to withhold or withdraw treatment; and

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

3. Any member of the medical or nursing staff, other than a nurse practitioner **or physician assistant**, informed of a revocation made pursuant to this section shall immediately notify an attending [~~physician or attending nurse~~] practitioner of the revocation.

§ 29. The opening paragraph of subdivision 2 of section 2994-k of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

If a decision to withhold or withdraw life-sustaining treatment has been made pursuant to this article, and an attending [~~physician or attending nurse~~] practitioner determines at any time that the decision is no longer appropriate or authorized because the patient has regained decision-making capacity or because the patient's condition has otherwise improved, the physician [~~or~~]**,** nurse practitioner **or physician assistant** shall immediately:

§ 30. Section 2994-l of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

§ 2994-l. Interinstitutional transfers. If a patient with an order to withhold or withdraw life-sustaining treatment is transferred from a mental hygiene facility to a hospital or from a hospital to a different hospital, any such order or plan shall remain effective until an attending [~~physician or attending nurse~~] practitioner first examines the transferred patient, whereupon an attending [~~physician or attending nurse~~] practitioner must either:

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

2. Cancel such order, if the attending [~~physician or attending nurse~~] practitioner determines that the order is no longer appropriate or authorized. Before canceling the order the attending [~~physician or attending nurse~~] practitioner shall make reasonable efforts to notify the person who made the decision to withhold or withdraw treatment and the hospital staff directly responsible for the patient's care of any such cancellation. If such notice cannot reasonably be made prior to canceling the order or plan, the attending [~~physician or attending nurse~~] practitioner shall make such notice as soon as reasonably practicable after cancellation.

§ 31. Subdivisions 3 and 4 of section 2994-m of the public health law, as amended by chapter 430 of the laws of 2017, are amended to read as follows:

3. Committee membership. The membership of ethics review committees must be interdisciplinary and must include at least five members who have demonstrated an interest in or commitment to patient's rights or to the medical, public health, or social needs of those who are ill. At least three ethics review committee members must be health or social services practitioners, at least one of whom must be a registered nurse

and one of whom must be a physician [~~or~~], nurse practitioner **or physician assistant**. At least one member must be a person without any governance, employment or contractual relationship with the hospital. In a residential health care facility the facility must offer the residents' council of the facility (or of another facility that participates in the committee) the opportunity to appoint up to two persons to the ethics review committee, none of whom may be a resident of or a family member of a resident of such facility, and both of whom shall be persons who have expertise in or a demonstrated commitment to patient rights or to the care and treatment of the elderly or nursing home residents through professional or community activities, other than activities performed as a health care provider.

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

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

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

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

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

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

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

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

§ 32. Paragraph (b) of subdivision 4 of section 2994-r of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

(i) the hospital administrator;

(ii) an attending [~~physician or attending nurse~~] practitioner;

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

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

§ 33. Subdivision 1 of section 2994-s of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

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

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

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

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

§ 34. Subdivision 2 of section 2994-aa of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

2. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient. Where more than one

physician [~~or~~], nurse practitioner **or physician assistant** shares such responsibility, any such physician [~~or~~], nurse practitioner **or physician assistant** may act as the attending [~~physician or attending nurse~~] practitioner pursuant to this article.

§ 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:

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

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

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

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

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

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 this chapter.

§ 36. Section 2994-dd of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

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

2. A nonhospital order not to resuscitate shall be issued upon a standard form prescribed by the commissioner. The commissioner shall also develop a standard bracelet that 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 and that no person may require a patient to wear such a bracelet as a condi-

tion for honoring a nonhospital order not to resuscitate or for providing health care services.

3. An attending [~~physician or attending nurse~~] practitioner who has issued a nonhospital order not to resuscitate, and who transfers care of the patient to another physician [~~or~~], nurse practitioner **or physician assistant**, shall inform the physician [~~or~~], nurse practitioner **or physician assistant** of the order.

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

5. A person who has consented to a nonhospital order not to resuscitate may at any time revoke his or her consent to the order by any act evidencing a specific intent to revoke such consent. Any health care professional, other than the attending [~~physician or attending nurse~~] practitioner, informed of a revocation of consent to a nonhospital order not to resuscitate shall notify the attending [~~physician or attending nurse~~] practitioner of the revocation. An attending [~~physician or attending nurse~~] practitioner who is informed that a nonhospital order not to resuscitate has been revoked shall record the revocation in the patient's medical record, cancel the order and make diligent efforts to retrieve the form issuing the order, and the standard bracelet, if any.

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.

§ 37. Subdivision 2 of section 2994-ee of the public health law, as amended by chapter 430 of the laws of 2017, is amended to read as follows:

2. Hospital emergency services physicians and hospital emergency services nurse practitioners **and physician assistants** may direct that the order be disregarded if other significant and exceptional medical circumstances warrant disregarding the order.

§ 38. This act shall take effect on the one hundred eightieth day 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, then sections seventeen, eighteen, nineteen and twenty of this act shall take effect on the same date and in the same manner as such chapter 342 of the laws of 2018, takes effect. Effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be amended, repealed and/or promulgated on or before such date.