

STATE OF NEW YORK

175

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

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 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 Assem-
bly, do enact as follows:

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

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

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

14 2. Decision-making standard. After consultation with a licensed physi-
15 cian, registered nurse, physician assistant, nurse practitioner,
16 licensed psychologist, licensed master social worker, or a licensed
17 clinical social worker, the agent shall make health care decisions: (a)
18 in accordance with the principal's wishes, including the principal's
19 religious and moral beliefs; or (b) if the principal's wishes are not
20 reasonably known and cannot with reasonable diligence be ascertained, in
21 accordance with the principal's best interests; provided, however, that
22 if the principal's wishes regarding the administration of artificial

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

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1 nutrition and hydration are not reasonably known and cannot with reason-
2 able diligence be ascertained, the agent shall not have the authority to
3 make decisions regarding these measures.

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

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

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

17 The health care provider[~~, the conservator for, or committee~~] of the
18 principal under article eighty-one of the mental hygiene law or article
19 seventeen-A of the surrogate's court procedure act, members of the prin-
20 cipal's family, a close friend of the principal as defined in subdivi-
21 sion [~~five~~] four of section [~~two-thousand-nine~~] twenty-nine hundred
22 [~~sixty-one~~] ninety-four-a of this chapter, or the commissioner [~~of~~
23 ~~health~~], the commissioner of mental health, or the commissioner of
24 developmental disabilities may commence a special proceeding pursuant to
25 article four of the civil practice law and rules, in a court of compe-
26 tent jurisdiction, with respect to any dispute arising under this arti-
27 cle, including, but not limited to, a proceeding to:

28 § 5. Section 2993 of the public health law, as amended by chapter 672
29 of the laws of 2019, is amended to read as follows:

30 § 2993. Regulations. The commissioner [~~of health~~], in consultation
31 with the commissioners of the office of mental health and the office for
32 people with developmental disabilities, shall establish such regulations
33 as may be necessary for the implementation of this article, subject to
34 the provisions of subdivision two of section [~~two-thousand-nine~~] twen-
35 ty-nine hundred ninety-one of this article.

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

39 17. "Health or social [~~service~~] services practitioner" means a regis-
40 tered professional nurse, nurse practitioner, physician, physician
41 assistant, psychologist, licensed master social worker or licensed clin-
42 ical social worker, licensed or certified pursuant to the education law
43 acting within his or her scope of practice.

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

52 § 7. The opening paragraph of subdivision 3 of section 2994-b of the
53 public health law, as amended by chapter 708 of the laws of 2019, is
54 amended to read as follows:

55 Prior to seeking or relying upon a health care decision by a surrogate
56 for a patient under this article, if the attending practitioner has

1 reason to believe that the patient has a history of receiving services
2 for [~~mental retardation or~~] a developmental disability; it reasonably
3 appears to the attending practitioner that the patient has [~~mental~~
4 ~~retardation or~~] a developmental disability; or the practitioner has
5 reason to believe that the patient has been transferred from a mental
6 hygiene facility operated or licensed by the office of mental health,
7 then such physician, nurse practitioner or physician assistant shall
8 make reasonable efforts to determine whether paragraphs (a), (b) or (c)
9 of this subdivision are applicable:

10 § 8. Subdivision 3 of section 2994-e of the public health law, as
11 amended by chapter 708 of the laws of 2019, is amended to read as
12 follows:

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

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

28 § 9. Subparagraph (iv) of paragraph (b) of subdivision 4 of section
29 2994-m of the public health law, as amended by chapter 708 of the laws
30 of 2019, is amended to read as follows:

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

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

40 § 2994-u. Rights to be publicized. The commissioner shall prepare a
41 statement summarizing the rights, duties, and requirements of this arti-
42 cle and shall require that a copy of such statement be furnished to
43 [~~patients~~] a patient or to [~~persons on~~] the surrogate [~~list known to the~~
44 ~~hospital~~], or to the [~~parents or guardians~~] parent or guardian of a
45 minor [~~patients~~] patient, at or prior to admission to the hospital, or
46 within a reasonable time thereafter, and to [~~each member of the hospi-~~
47 ~~tal's staff directly involved with patient care~~] any person on the
48 surrogate list who requests a copy of such statement from the hospital.
49 The statement shall also be made available to the hospital clinical
50 staff.

51 § 11. The commissioner of health shall revise the statement of rights
52 that hospitals are required to post (known as the Patient's Bill of
53 Rights) pursuant to paragraph (g) of subdivision 1 of section 2803 of
54 the public health law, by replacing the clause regarding orders not to
55 resuscitate with a statement that more generally informs patients of
56 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.

§ 12. Subdivisions 12 and 13 of section 2994-aa of the public health law, subdivision 12 as amended by chapter 672 of the laws of 2019 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 for people with 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.

§ 13. Subdivisions 2 and 6 of section 2994-dd of the public health law, as amended by chapter 708 of the laws of 2019, 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 or other article 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 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.

§ 14. 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

1 ninety-four-ee of this article, or for other actions taken reasonably
2 and in good faith pursuant to this [~~section~~ article].
3 § 15. This act shall take effect on the ninetieth day after it shall
4 have become a law, provided that the amendments to article 29-C of the
5 public health law shall apply to decisions made pursuant to health care
6 proxies created prior to the effective date of this act as well as those
7 created thereafter.