

# STATE OF NEW YORK

5327

2021-2022 Regular Sessions

## IN SENATE

March 2, 2021

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

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

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

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  
23 nutrition and hydration are not reasonably known and cannot with reason-

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

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1 able diligence be ascertained, the agent shall not have the authority to  
2 make decisions regarding these measures.

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

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

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

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

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

29 § 2993. Regulations. The commissioner [~~of health~~], in consultation  
30 with the commissioners of the office of mental health and the office for  
31 people with developmental disabilities, shall establish such regulations  
32 as may be necessary for the implementation of this article, subject to  
33 the provisions of subdivision two of section [~~two-thousand-nine~~] twen-  
34 ty-nine hundred ninety-one of this article.

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

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

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

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

54 Prior to seeking or relying upon a health care decision by a surrogate  
55 for a patient under this article, if the attending practitioner has  
56 reason to believe that the patient has a history of receiving services

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

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

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

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

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

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

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

39 § 2994-u. Rights to be publicized. The commissioner shall prepare a  
40 statement summarizing the rights, duties, and requirements of this arti-  
41 cle and shall require that a copy of such statement be furnished to  
42 [~~patients~~] a patient or to [~~persons on~~] the surrogate [~~list known to the~~  
43 ~~hospital~~], or to the [~~parents or guardians~~] parent or guardian of a  
44 minor [~~patients~~] patient, at or prior to admission to the hospital, or  
45 within a reasonable time thereafter, and to [~~each member of the hospi-~~  
46 ~~tal's staff directly involved with patient care~~] any person on the  
47 surrogate list who requests a copy of such statement from the hospital.  
48 The statement shall also be made available to the hospital clinical  
49 staff.

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

1 deciding about health care, including appointing a health care agent,  
2 consenting to do-not-resuscitate orders and making other life-sustaining  
3 treatment decisions. The clause should also state in substance that the  
4 hospital will also provide such statement upon request to any family  
5 member or friend of a patient who lacks decision-making capacity.

6 § 12. Subdivisions 12 and 13 of section 2994-aa of the public health  
7 law, subdivision 12 as amended by chapter 672 of the laws of 2019 and  
8 subdivision 13 as amended by chapter 167 of the laws of 2011, are  
9 amended to read as follows:

10 12. "Mental hygiene facility" means a residential facility operated or  
11 licensed by the office of mental health [~~or the office for people with~~  
12 ~~developmental disabilities~~].

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

18 § 13. Subdivisions 2 and 6 of section 2994-dd of the public health  
19 law, as amended by chapter 708 of the laws of 2019, are amended to read  
20 as follows:

21 2. A nonhospital order not to resuscitate shall be issued upon a stan-  
22 dard form prescribed by the commissioner. [~~The commissioner shall also~~  
23 ~~develop a~~] A standard bracelet or other article that may be worn by a  
24 patient with a nonhospital order not to resuscitate to identify that  
25 status; provided, however, that no person may require a patient to wear  
26 such a bracelet and that no person may require a patient to wear such a  
27 bracelet as a condition for honoring a nonhospital order not to resusci-  
28 tate or for providing health care services.

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

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

50 § 2994-gg. Immunity. No person shall be subjected to criminal prose-  
51 cution or civil liability, or be deemed to have engaged in unprofes-  
52 sional conduct, for honoring reasonably and in good faith pursuant to  
53 this [~~section~~] article a nonhospital order not to resuscitate, for  
54 disregarding a nonhospital order pursuant to section twenty-nine hundred  
55 ninety-four-ee of this article, or for other actions taken reasonably  
56 and in good faith pursuant to this [~~section~~] article.

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