STATE OF NEW YORK

8536

IN ASSEMBLY

January 8, 2024

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

AN ACT to amend the public health law and the surrogate's court procedure act, in relation to orders not to resuscitate

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

Section 1. The opening paragraph of subdivision 3 of section 2994-b of the public health law, as amended by chapter 479 of the laws of 2022, is amended to read as follows:

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

§ 2. Paragraph (c) of subdivision 4 of section 2994-c of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

(c) if the patient **is in a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law or** was transferred from a mental hygiene facility, to the director of the mental hygiene facility and to the mental hygiene legal service under article forty-seven of the mental hygiene law.

§ 3. Section 2994-l of the public health law, as amended by chapter 708 of the laws of 2019, is amended to read as follows:

§ 2994-l. Interinstitutional transfers. **1.** If a patient with an order to withhold or withdraw life-sustaining treatment is transferred from a

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

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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 practitioner first examines the transferred patient, whereupon an attending practitioner must either:

[~~1.~~] **(a)** 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.~~] **(b)** Cancel such order, if the attending practitioner determines that the order is no longer appropriate or authorized. Before canceling the order the attending 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 practitioner shall make such notice as soon as reasonably practicable after cancellation.

2. Orders to withhold or withdraw life-sustaining treatment shall remain effective and no affirmative action by a general hospital shall be required pursuant to this section where a patient is transferred within a general hospital between a medical unit and a ward, wing, unit, or other part of the general hospital which is operated for the purpose of providing services for persons with mental illness pursuant to an operating certificate issued by the commissioner of mental health.

§ 4. Subdivision 5 of section 2994-cc of the public health law, as amended by a chapter of the laws of 2023 amending the public health law relating to orders not to resuscitate, as proposed in legislative bills numbers S. 2930 and A. 4332, is amended to read as follows:

5. Consent by a patient or a surrogate for a patient in a **residential** facility operated or licensed by the office of mental health**, other than a hospital as defined in section 1.03 of the mental hygiene law,** shall be governed by this article. Consent by a patient who is intellectually or otherwise developmentally disabled and is eligible for life-sustaining treatment decision pursuant to section seventeen hundred fifty-b of the surrogate's court procedure act shall be governed by that section.

§ 5. Subparagraph (i) of paragraph (b) of subdivision 4 of section 1750-b of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, is amended to read as follows:

(i) the person who is intellectually disabled has a medical condition as follows:

A. a terminal condition, [~~as defined in subdivision twenty-three of section twenty-nine hundred sixty-one of the public health law~~] **which for the purpose of this section means an illness or injury from which there is no recovery, and which reasonably can be expected to cause death within one year**; or

B. permanent unconsciousness; or

C. a medical condition other than such person's intellectual disability which requires life-sustaining treatment, is irreversible and which will continue indefinitely; and

§ 6. Paragraph (d) of subdivision 5 of section 1750-b of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, is amended to read as follows:

(d) Dispute mediation. In the event of an objection pursuant to this subdivision, at the request of the objecting party or person or entity authorized to act as a guardian under this section, except a surrogate decision making committee established pursuant to article eighty of the mental hygiene law, such objection shall be referred to [~~a dispute mediation system~~] **an ethics review committee**, established pursuant to

section two thousand nine hundred [~~seventy-two~~] ninety-four-m of the public health law or similar entity for mediating disputes in a hospice, such as a patient's advocate's office, hospital chaplain's office or ethics committee, as described in writing and adopted by the governing authority of such hospice, for non-binding mediation. In the event that such dispute cannot be resolved within seventy-two hours or no such mediation entity exists or is reasonably available for mediation of a dispute, the objection shall proceed to judicial review pursuant to this subdivision. The party requesting mediation shall provide notification to those parties entitled to notice pursuant to paragraph (a) of this subdivision.

§ 7. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the public health law relating to orders not to resuscitate, as proposed in legislative bills numbers S. 2930 and A. 4332, takes effect.