

STATE OF NEW YORK

3283--A

Cal. No. 166

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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)

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

LBD05270-05-4

1 in accordance with the principal's wishes, including the principal's
2 religious and moral beliefs; or (b) if the principal's wishes are not
3 reasonably known and cannot with reasonable diligence be ascertained, in
4 accordance with the principal's best interests; provided, however, that
5 if the principal's wishes regarding the administration of artificial
6 nutrition and hydration are not reasonably known and cannot with reason-
7 able diligence be ascertained, the agent shall not have the authority to
8 make decisions regarding these measures.

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

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

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

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

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

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

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

44 17. "Health or social [~~service~~] services practitioner" means a regis-
45 tered professional nurse, nurse practitioner, physician, physician
46 assistant, psychologist, licensed master social worker, or licensed
47 clinical social worker, licensed [~~or~~], certified [~~pursuant to~~] or
48 authorized under the education law acting within [~~his or her~~] such
49 health or social services practitioner's scope of practice.

50 26. "Person connected with the case" means the patient, any person on
51 the surrogate list, a parent or guardian of a minor patient, the hospi-
52 tal administrator, an attending [~~physician~~] practitioner, any other
53 health or social services practitioner who is or has been directly
54 involved in the patient's care, and any duly authorized state agency,
55 including the facility director or regional director for a patient

1 transferred from a mental hygiene facility and the facility director for
2 a patient transferred from a correctional facility.

3 § 7. Subdivision 3 of section 2994-e of the public health law, as
4 amended by chapter 708 of the laws of 2019, is amended to read as
5 follows:

6 3. Decision-making standards and procedures for emancipated minor
7 patient. (a) If an attending practitioner determines that a patient is
8 an emancipated minor patient with decision-making capacity and documents
9 the basis for that determination in the patient's medical record, the
10 patient shall have the authority to decide about life-sustaining treat-
11 ment. [~~Such~~] That authority shall include a decision to withhold or
12 withdraw life-sustaining treatment if an attending practitioner and the
13 ethics review committee determine that the decision accords with the
14 standards for surrogate decisions for adults, and the ethics review
15 committee approves the decision.

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

21 § 8. Subparagraph (iv) of paragraph (b) of subdivision 4 of section
22 2994-m of the public health law, as amended by chapter 708 of the laws
23 of 2019, is amended to read as follows:

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

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

32 § 2994-u. Rights to be publicized. The commissioner shall prepare a
33 statement summarizing the rights, duties, and requirements of this arti-
34 cle and shall require that a copy of such statement be furnished to
35 [~~patients~~] a patient or to [~~persons on~~] the patient's surrogate [~~list~~
36 ~~known to the hospital~~], or to the [~~parents or guardians~~] parent or guar-
37 dian of a minor [~~patients~~] patient, at or prior to admission to the
38 hospital, or within a reasonable time thereafter, and to [~~each member of~~
39 ~~the hospital's staff directly involved with patient care~~] any person on
40 the surrogate list who requests a copy of the statement from the hospi-
41 tal. The statement shall also be made available to the hospital clinical
42 staff.

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

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

1 subdivision 13 as amended by chapter 167 of the laws of 2011, are
2 amended to read as follows:

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

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

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

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

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

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

43 § 2994-gg. Immunity. No person shall be subjected to criminal prose-
44 cution or civil liability, or be deemed to have engaged in unprofes-
45 sional conduct, for honoring reasonably and in good faith pursuant to
46 this [~~section~~] article a nonhospital order not to resuscitate, for
47 disregarding a nonhospital order pursuant to section twenty-nine hundred
48 ninety-four-ee of this article, or for other actions taken reasonably
49 and in good faith pursuant to this [~~section~~] article.

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