

# STATE OF NEW YORK

8009

## IN SENATE

January 5, 2024

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

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:

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

4 Prior to seeking or relying upon a health care decision by a surrogate  
5 for a patient under this article, if the attending practitioner has  
6 reason to believe that the patient has a history of receiving services  
7 for [~~a~~] an intellectual or developmental disability; it reasonably  
8 appears to the attending practitioner that the patient has [~~a~~] an intel-  
9 lectual or developmental disability; or the practitioner in a general  
10 hospital has reason to believe that the patient has been temporarily  
11 transferred from a mental hygiene facility operated or licensed by the  
12 office of mental health or the office for people with developmental  
13 disabilities, then such physician, nurse practitioner or physician  
14 assistant shall make reasonable efforts to determine whether [~~para-~~  
15 ~~graphs~~] paragraph (a), (b) or (c) of this subdivision [~~are~~] is applica-  
16 ble:

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

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

25 § 3. Section 2994-l of the public health law, as amended by chapter  
26 708 of the laws of 2019, is amended to read as follows:

27 § 2994-l. Interinstitutional transfers. 1. If a patient with an order  
28 to withhold or withdraw life-sustaining treatment is transferred from a

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

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1 mental hygiene facility to a hospital or from a hospital to a different  
2 hospital, any such order or plan shall remain effective until an attend-  
3 ing practitioner first examines the transferred patient, whereupon an  
4 attending practitioner must either:

5 ~~[1-]~~ (a) Issue appropriate orders to continue the prior order or plan.  
6 Such orders may be issued without obtaining another consent to withhold  
7 or withdraw life-sustaining treatment pursuant to this article; or

8 ~~[2-]~~ (b) Cancel such order, if the attending practitioner determines  
9 that the order is no longer appropriate or authorized. Before canceling  
10 the order the attending practitioner shall make reasonable efforts to  
11 notify the person who made the decision to withhold or withdraw treat-  
12 ment and the hospital staff directly responsible for the patient's care  
13 of any such cancellation. If such notice cannot reasonably be made prior  
14 to canceling the order or plan, the attending practitioner shall make  
15 such notice as soon as reasonably practicable after cancellation.

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

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

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

34 § 5. Subparagraph (i) of paragraph (b) of subdivision 4 of section  
35 1750-b of the surrogate's court procedure act, as amended by chapter 198  
36 of the laws of 2016, is amended to read as follows:

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

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

44 B. permanent unconsciousness; or

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

48 § 6. Paragraph (d) of subdivision 5 of section 1750-b of the surro-  
49 gate's court procedure act, as amended by chapter 198 of the laws of  
50 2016, is amended to read as follows:

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

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

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