

STATE OF NEW YORK

7184--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 12, 2023

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 if the principal's wishes regarding the administration of artificial
2 nutrition and hydration are not reasonably known and cannot with reason-
3 able diligence be ascertained, the agent shall not have the authority to
4 make decisions regarding these measures.

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

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

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

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

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

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

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

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

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

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

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

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

16 § 8. Subparagraph (iv) of paragraph (b) of subdivision 4 of section
17 2994-m of the public health law, as amended by chapter 708 of the laws
18 of 2019, is amended to read as follows:

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

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

27 § 2994-u. Rights to be publicized. The commissioner shall prepare a
28 statement summarizing the rights, duties, and requirements of this arti-
29 cle and shall require that a copy of such statement be furnished to
30 [~~patients~~] a patient or to [~~persons-on~~] the patient's surrogate [~~list~~
31 ~~known-to-the-hospital~~], or to the [~~parents-or-guardians~~] parent or guar-
32 dian of a minor [~~patients~~] patient, at or prior to admission to the
33 hospital, or within a reasonable time thereafter, and to [~~each member of~~
34 ~~the-hospital's-staff-directly-involved-with-patient-care~~] any person on
35 the surrogate list who requests a copy of the statement from the hospi-
36 tal. The statement shall also be made available to the hospital clinical
37 staff.

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

50 § 11. Subdivisions 12 and 13 of section 2994-aa of the public health
51 law, subdivision 12 as amended by chapter 672 of the laws of 2019 and
52 subdivision 13 as amended by chapter 167 of the laws of 2011, are
53 amended to read as follows:

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

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

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

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

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

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

38 § 2994-gg. Immunity. No person shall be subjected to criminal prose-
39 cution or civil liability, or be deemed to have engaged in unprofes-
40 sional conduct, for honoring reasonably and in good faith pursuant to
41 this [~~section~~] article a nonhospital order not to resuscitate, for
42 disregarding a nonhospital order pursuant to section twenty-nine hundred
43 ninety-four-ee of this article, or for other actions taken reasonably
44 and in good faith pursuant to this [~~section~~] article.

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