STATE OF NEW YORK

7507

2023-2024 Regular Sessions

IN SENATE

June 2, 2023

Introduced by Sen. BROUK -- (at request of the Office of Mental Health) -- 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 for and decisions regarding life-sustaining treatment and hospice care; and to repeal article 29-B, subdivision 12 of section 2994-aa and subdivision 5 of section 2994-cc of such law relating thereto

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

Section 1. Article 29-B of the public health law is REPEALED.

§ 2. Subdivision 18 of section 2994-a of the public health law, as amended by chapter 167 of the laws of 2011, is amended to read as follows:

18. "Hospital" means a general hospital, **a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** a residential health care facility, or hospice.

§ 3. The opening paragraph and paragraph (c) of subdivision 3 of section 2994-b of the public health law, the opening paragraph as amended by chapter 479 of the laws of 2022 and paragraph (c) as amended by chapter 708 of the laws of 2019, are 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; **the patient is in a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law;** 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**

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

LBD07353-01-3

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:

(c) If a health care decision for a patient cannot be made under paragraphs (a) or (b) of this subdivision, but consent for [~~the~~] a routine or major medical treatment decision may be provided pursuant to the mental hygiene law or regulations of the office of mental health or the office for people with developmental disabilities, then the decision shall be governed by such statute or regulations and not by this article.

§ 4. Subparagraphs (ii) and (iii) of paragraph (b) of subdivision 3 of section 2994-c of the public health law, as amended by chapter 708 of the laws of 2019, are amended to read as follows:

(ii) In a general hospital or hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, a health or social services practitioner employed by or otherwise formally affiliated with the facility must independently determine whether an adult patient lacks decision-making capacity if the surrogate's decision concerns the withdrawal or withholding of life-sustaining treatment.

(iii) With respect to decisions regarding hospice care for a patient in a general hospital, hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, or residential health care facility, the health or social services practitioner must be employed by or otherwise formally affiliated with the general hospital, hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, or residential health care facility.

§ 5. 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.

§ 6. Subparagraph (ii) of paragraph (a) and paragraph (c) of subdivision 5 of section 2994-d of the public health law, as amended by chapter 708 of the laws of 2019, are amended to read as follows:

(ii) The provision of treatment would involve such pain, suffering or other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances and the patient has an irreversible or incurable condition other than mental illness or a developmental disability, as determined by an attending practitioner with the independent concurrence of another physician, nurse practitioner or physician assistant to a reasonable degree of medical certainty and in accord with accepted medical standards.

(c) In a general hospital or hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, if the attending practitioner objects to a surrogate's decision, under subparagraph (ii) of paragraph (a) of this subdivision, to withdraw or withhold nutrition and hydration provided by means of medical treatment, the decision shall not be implemented until the ethics review committee, including at least one physician, nurse practitioner or physician assistant who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and determines that it meets the standards set forth in this subdivision and subdivision four of this section.

§ 7. Subparagraph (iii) of paragraph (b) of subdivision 5-a of section 2994-g of the public health law, as amended by chapter 708 of the laws of 2019, is amended to read as follows:

(iii) in settings other than a general hospital or residential health care facility, the medical director of the hospice **or hospital as defined in subdivision ten of section 1.03 of the mental hygiene law**, or a physician designated by the medical director, must independently determine that he or she concurs that the recommendation is medically appropriate and consistent with such standards for surrogate decisions; provided that if the medical director is the patient's attending physician, a different physician designated by the hospice **or hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** must make this independent determination; and

§ 8. Paragraph (c) of subdivision 5-a of section 2994-g of the public health law, as separately amended by chapters 622 and 708 of the laws of 2019, is amended to read as follows:

(c) The ethics review committee of the general hospital, **hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** residential health care facility or hospice, as applicable, including at least one physician, nurse practitioner or physician assistant who is not the patient's attending practitioner, or a court of competent jurisdiction, must review the decision and determine that it is consistent with such standards for surrogate decisions. This requirement shall not apply to decisions about routine medical treatment. Such decisions shall be governed by subdivision three of this section.

§ 9. 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 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.

§ 10. Paragraph (a) of subdivision 4 of section 2994-m of the public health law, as amended by chapter 708 of the laws of 2019, is amended to read as follows:

(a) These procedures are required only when: (i) the ethics review committee is convened to review a decision by a surrogate to withhold or

withdraw life-sustaining treatment for: (A) a patient in a residential health care facility pursuant to paragraph (b) of subdivision five of section twenty-nine hundred ninety-four-d of this article; (B) a patient in a general hospital **or hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** pursuant to paragraph (c) of subdivision five of section twenty-nine hundred ninety-four-d of this article; or (C) an emancipated minor patient pursuant to subdivision three of section twenty-nine hundred ninety-four-e of this article; or (ii) when a person connected with the case requests the ethics review committee to provide assistance in resolving a dispute about proposed care. Nothing in this section shall bar health care providers from first striving to resolve disputes through less formal means, including the informal solicitation of ethical advice from any source.

§ 11. Paragraph (c) of subdivision 4 of section 2994-m of the public health law, as amended by chapter 708 of the laws of 2019, is amended to read as follows:

(c) When an ethics review committee is convened to review decisions regarding hospice care for a patient in a general hospital**, hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** or residential health care facility, the responsibilities of this section shall be carried out by the ethics review committee of the general hospital**, hospital as defined in subdivision ten of section 1.03 of the mental hygiene law,** or residential health care facility, provided that such committee shall invite a representative from hospice to participate.

§ 12. Subdivision 12 of section 2994-aa of the public health law is REPEALED and subdivisions 13 and 13-a are renumbered subdivisions 12 and 13.

§ 13. Subdivision 5 of section 2994-cc of the public health law is REPEALED.

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

§ 2994-ff. Interinstitutional transfer. If a patient with a nonhospital order not to resuscitate is admitted to a hospital, the order shall be treated as an order not to resuscitate for a patient transferred from another hospital, and shall be governed by article twenty-nine-CC of this chapter[~~, except that any such order for a patient admitted to a mental hygiene facility shall be governed by article twenty-nine-B of this chapter~~].

§ 15. 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 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

§ 16. 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 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~~] 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.

§ 17. This act shall take effect December 31, 2023.