STATE OF NEW YORK

7507--A

Cal. No. 665

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 -- 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, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public health law, in relation to orders not to resuscitate and decisions regarding life-sustaining treatment and hospice care

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

Section 1. Section 2994-a of the public health law is amended by adding a new subdivision 18-a to read as follows:

18-a. "Mental hygiene hospital" means any hospital as defined in subdivision ten of section 1.03 of the mental hygiene law.

§ 2. Subdivision 1-a of section 2994-b of the public health law, as added by chapter 742 of the laws of 2023, is amended to read as follows:

1-a. This article shall also apply to decisions regarding orders not to resuscitate**, life-sustaining treatment, and hospice care** for a patient who lacks decision-making capacity in a **mental hygiene** hospital [~~as defined by section 1.03 of the mental hygiene law~~].

§ 3. 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 mental hygiene hospital,** 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.

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

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

§ 4. Paragraph (c) of subdivision 5 of section 2994-d of the public health law, as amended by chapter 708 of the laws of 2019, is amended to read as follows:

(c) In a general hospital or mental hygiene hospital, 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.

§ 5. Subparagraphs (i) and (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, are amended to read as follows:

(i) in a general hospital or mental hygiene hospital, at least one other physician, nurse practitioner or physician assistant designated by the hospital must independently determine that [~~he or she~~] such physician, nurse practitioner or physician assistant concurs that the recommendation is consistent with such standards for surrogate decisions;

(iii) in settings other than a general hospital or residential health care facility, the medical director of the hospice or mental hygiene hospital, or a physician designated by the medical director, must independently determine that [~~he or she~~] such medical director or physician 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 mental hygiene hospital, must make this independent determination; and

§ 6. 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, mental hygiene hospital, 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.

§ 7. The opening paragraph of subdivision 1 of section 2994-l of the public health law, as amended by chapter 40 of the laws of 2024, is amended to read as follows:

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, including a mental hygiene hospital, any such order or plan shall remain effective until an attending practitioner first examines the transferred patient, whereupon an attending practitioner must either:

§ 8. 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 mental hygiene hospital,** 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.

§ 9. 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**, mental hygiene hospital,** or residential health care facility, the responsibilities of this section shall be carried out by the ethics review committee of the general hospital**, mental hygiene hospital,** or residential health care facility, provided that such committee shall invite a representative from hospice to participate.

§ 10. This act shall take effect on the one hundred eightieth day after it shall have become a law.