

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:

1 Section 1. Section 2994-a of the public health law is amended by
2 adding a new subdivision 18-a to read as follows:
3 18-a. "Mental hygiene hospital" means any hospital as defined in
4 subdivision ten of section 1.03 of the mental hygiene law.
5 § 2. Subdivision 1-a of section 2994-b of the public health law, as
6 added by chapter 742 of the laws of 2023, is amended to read as follows:
7 1-a. This article shall also apply to decisions regarding orders not
8 to resuscitate, life-sustaining treatment, and hospice care for a
9 patient who lacks decision-making capacity in a mental hygiene hospital
10 [~~as defined by section 1.03 of the mental hygiene law~~].
11 § 3. Subparagraphs (ii) and (iii) of paragraph (b) of subdivision 3 of
12 section 2994-c of the public health law, as amended by chapter 708 of
13 the laws of 2019, are amended to read as follows:
14 (ii) In a general hospital or mental hygiene hospital, a health or
15 social services practitioner employed by or otherwise formally affil-
16 iated with the facility must independently determine whether an adult
17 patient lacks decision-making capacity if the surrogate's decision
18 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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1 (iii) With respect to decisions regarding hospice care for a patient
2 in a general hospital, mental hygiene hospital, or residential health
3 care facility, the health or social services practitioner must be
4 employed by or otherwise formally affiliated with the general hospital,
5 mental hygiene hospital, or residential health care facility.

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

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

19 § 5. Subparagraphs (i) and (iii) of paragraph (b) of subdivision 5-a
20 of section 2994-g of the public health law, as amended by chapter 708 of
21 the laws of 2019, are amended to read as follows:

22 (i) in a general hospital or mental hygiene hospital, at least one
23 other physician, nurse practitioner or physician assistant designated by
24 the hospital must independently determine that ~~[he or she]~~ such physi-
25 cian, nurse practitioner or physician assistant concurs that the recom-
26 mendation is consistent with such standards for surrogate decisions;

27 (iii) in settings other than a general hospital or residential health
28 care facility, the medical director of the hospice or mental hygiene
29 hospital, or a physician designated by the medical director, must inde-
30 pendently determine that ~~[he or she]~~ such medical director or physician
31 concurs that the recommendation is medically appropriate and consistent
32 with such standards for surrogate decisions; provided that if the
33 medical director is the patient's attending physician, a different
34 physician designated by the hospice or mental hygiene hospital, must
35 make this independent determination; and

36 § 6. Paragraph (c) of subdivision 5-a of section 2994-g of the public
37 health law, as separately amended by chapters 622 and 708 of the laws of
38 2019, is amended to read as follows:

39 (c) The ethics review committee of the general hospital, mental
40 hygiene hospital, residential health care facility or hospice, as appli-
41 cable, including at least one physician, nurse practitioner or physician
42 assistant who is not the patient's attending practitioner, or a court of
43 competent jurisdiction, must review the decision and determine that it
44 is consistent with such standards for surrogate decisions. This require-
45 ment shall not apply to decisions about routine medical treatment. Such
46 decisions shall be governed by subdivision three of this section.

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

50 If a patient with an order to withhold or withdraw life-sustaining
51 treatment is transferred from a mental hygiene facility to a hospital or
52 from a hospital to a different hospital, including a mental hygiene
53 hospital, any such order or plan shall remain effective until an attend-
54 ing practitioner first examines the transferred patient, whereupon an
55 attending practitioner must either:

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

4 (a) These procedures are required only when: (i) the ethics review
5 committee is convened to review a decision by a surrogate to withhold or
6 withdraw life-sustaining treatment for: (A) a patient in a residential
7 health care facility pursuant to paragraph (b) of subdivision five of
8 section twenty-nine hundred ninety-four-d of this article; (B) a patient
9 in a general hospital or mental hygiene hospital, pursuant to paragraph
10 (c) of subdivision five of section twenty-nine hundred ninety-four-d of
11 this article; or (C) an emancipated minor patient pursuant to subdivi-
12 sion three of section twenty-nine hundred ninety-four-e of this article;
13 or (ii) when a person connected with the case requests the ethics review
14 committee to provide assistance in resolving a dispute about proposed
15 care. Nothing in this section shall bar health care providers from first
16 striving to resolve disputes through less formal means, including the
17 informal solicitation of ethical advice from any source.

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

21 (c) When an ethics review committee is convened to review decisions
22 regarding hospice care for a patient in a general hospital, mental
23 hygiene hospital, or residential health care facility, the responsibil-
24 ities of this section shall be carried out by the ethics review commit-
25 tee of the general hospital, mental hygiene hospital, or residential
26 health care facility, provided that such committee shall invite a repre-
27 sentative from hospice to participate.

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