§ 2994-g. Health care decisions for adult patients without surrogates. 1. Identifying adult patients without surrogates. Within a reasonable time after admission as an inpatient to the hospital of each adult patient, the hospital shall make reasonable efforts to determine if the patient has appointed a health care agent or has a guardian, or if at least one individual is available to serve as the patient's surrogate in the event the patient lacks or loses decision-making capacity. With respect to a patient who lacks capacity, if no such health care agent, guardian or potential surrogate is identified, the hospital shall identify, to the extent reasonably possible, the patient's wishes and preferences, including the patient's religious and moral beliefs, about pending health care decisions, and shall record its findings in the patient's medical record.

2. Decision-making standards and procedures. (a) The procedures specified in this and the following subdivisions of this section apply to health care decisions for adult patients who would qualify for surrogate decision-making under this article but for whom no surrogate is reasonably available, willing or competent to act.

(b) Any health care decision made pursuant to this section shall be made in accordance with the standards set forth in subdivision four of section twenty-nine hundred ninety-four-d of this article and shall not be based on the financial interests of the hospital or any other health care provider. The specific procedures to be followed depend on whether the decision involves routine medical treatment, major medical treatment, or the withholding or withdrawal of life-sustaining treatment, and the location where the treatment is provided.

3. Routine medical treatment. (a) For purposes of this subdivision, "routine medical treatment" means any treatment, service, or procedure to diagnose or treat an individual's physical or mental condition, such as the administration of medication, the extraction of bodily fluids for analysis, or dental care performed with a local anesthetic, for which health care providers ordinarily do not seek specific consent from the patient or authorized representative. It shall not include the long-term provision of treatment such as ventilator support or a nasogastric tube but shall include such treatment when provided as part of post-operative

care or in response to an acute illness and recovery is reasonably expected within one month or less.

(b) An attending practitioner shall be authorized to decide about routine medical treatment for an adult patient who has been determined to lack decision-making capacity pursuant to section twenty-nine hundred ninety-four-c of this article. Nothing in this subdivision shall require health care providers to obtain specific consent for treatment where specific consent is not otherwise required by law.

4. Major medical treatment. (a) For purposes of this subdivision, "major medical treatment" means any treatment, service or procedure to diagnose or treat an individual's physical or mental condition: (i) where general anesthetic is used; or (ii) which involves any significant risk; or (iii) which involves any significant invasion of bodily integrity requiring an incision, producing substantial pain, discomfort, debilitation or having a significant recovery period; or (iv) which involves the use of physical restraints, as specified in regulations promulgated by the commissioner, except in an emergency; or (v) which involves the use of psychoactive medications, except when provided as part of post-operative care or in response to an acute illness and treatment is reasonably expected to be administered over a period of forty-eight hours or less, or when provided in an emergency.

(b) A decision to provide major medical treatment, made in accordance with the following requirements, shall be authorized for an adult patient who has been determined to lack decision-making capacity pursuant to section twenty-nine hundred ninety-four-c of this article.

(i) An attending practitioner shall make a recommendation in consultation with hospital staff directly responsible for the patient's care.

(ii) In a general hospital, at least one other physician, nurse practitioner or physician assistant designated by the hospital must independently determine that he or she concurs that the recommendation is appropriate.

(iii) In a residential health care facility, and for a hospice patient not in a general hospital, the medical director of the facility or hospice, or a physician, nurse practitioner or physician assistant designated by the medical director, must independently determine that he

or she concurs that the recommendation is appropriate; provided that if the medical director is the patient's attending practitioner, a different physician, nurse practitioner or physician assistant designated by the residential health care facility or hospice must make this independent determination. Any health or social services practitioner employed by or otherwise formally affiliated with the facility or hospice may provide a second opinion for decisions about physical restraints made pursuant to this subdivision.

5. Decisions to withhold or withdraw life-sustaining treatment. (a) A court of competent jurisdiction may make a decision to withhold or withdraw life-sustaining treatment for an adult patient who has been determined to lack decision-making capacity pursuant to section twenty-nine hundred ninety-four-c of this article if the court finds that the decision accords with standards for decisions for adults set forth in subdivisions four and five of section twenty-nine hundred ninety-four-d of this article.

(b) If the attending practitioner, with independent concurrence of a second physician, nurse practitioner or physician assistant designated by the hospital, determines to a reasonable degree of medical certainty that:

(i) life-sustaining treatment offers the patient no medical benefit because the patient will die imminently, even if the treatment is provided; and

(ii) the provision of life-sustaining treatment would violate accepted medical standards, then such treatment may be withdrawn or withheld from an adult patient who has been determined to lack decision-making capacity pursuant to section twenty-nine hundred ninety-four-c of this article, without judicial approval. This paragraph shall not apply to any treatment necessary to alleviate pain or discomfort.

5-a. Decisions regarding hospice care. An attending practitioner shall be authorized to make decisions regarding hospice care and execute appropriate documents for such decisions (including a hospice election form) for an adult patient under this section who is hospice eligible in accordance with the following requirements.

(a) The attending practitioner shall make decisions under this section

in consultation with staff directly responsible for the patient's care, and shall base his or her decisions on the standards for surrogate decisions set forth in subdivisions four and five of section twenty-nine hundred ninety-four-d of this article;

(b) There is a concurring opinion as follows:

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

(ii) in a residential health care facility, the medical director of the facility, or a physician, nurse practitioner or physician assistant designated by the medical director, must independently determine that he or she concurs that the recommendation is consistent with such standards for surrogate decisions; provided that if the medical director is the patient's attending practitioner, a different physician, nurse practitioner or physician assistant designated by the residential health care facility must make this independent determination; or

(iii) in settings other than a general hospital or residential health care facility, the medical director of the hospice, 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 must make this independent determination; and

(c) The ethics review committee of the general 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.

6. Physician, nurse practitioner or physician assistant objection. If a physician, nurse practitioner or physician assistant consulted for a concurring opinion objects to an attending practitioner's recommendation

or determination made pursuant to this section, or a member of the hospital staff directly responsible for the patient's care objects to an attending practitioner's recommendation about major medical treatment or treatment without medical benefit, the matter shall be referred to the ethics review committee if it cannot be otherwise resolved.