§ 2994-m. Ethics review committees. 1. Establishment of an ethics review committee, written policy. Each hospital shall establish at least one ethics review committee or participate in an ethics review committee that serves more than one hospital, and shall adopt a written policy governing committee functions, composition, and procedure, in accordance with the requirements of this article. A hospital may designate an existing committee, or subcommittee thereof, to carry out the functions of the ethics review committee provided the requirements of this section are satisfied.

2. Functions of the ethics review committee. (a) The ethics review committee shall consider and respond to any health care matter presented to it by a person connected with the case.

(b) The ethics review committee response to a health care matter may include:

(i) providing advice on the ethical aspects of proposed health care;

(ii) making a recommendation about proposed health care; or

(iii) providing assistance in resolving disputes about proposed health care.

(c) Recommendations and advice by the ethics review committee shall be advisory and nonbinding, except as specified in subdivision five of section twenty-nine hundred ninety-four-d of this article and subdivision three of section twenty-nine hundred ninety-four-e of this article.

3. Committee membership. The membership of ethics review committees must be interdisciplinary and must include at least five members who have demonstrated an interest in or commitment to patient's rights or to the medical, public health, or social needs of those who are ill. At least three ethics review committee members must be health or social services practitioners, at least one of whom must be a registered nurse and one of whom must be a physician, nurse practitioner or physician assistant. At least one member must be a person without any governance, employment or contractual relationship with the hospital. In a residential health care facility the facility must offer the residents' council of the facility (or of another facility that participates in the committee) the opportunity to appoint up to two persons to the ethics

review committee, none of whom may be a resident of or a family member of a resident of such facility, and both of whom shall be persons who have expertise in or a demonstrated commitment to patient rights or to the care and treatment of the elderly or nursing home residents through professional or community activities, other than activities performed as a health care provider.

4. Procedures for ethics review committee. (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 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.

(b)(i) A person connected with the case may not participate as an ethics review committee member in the consideration of that case.

(ii) The ethics review committee shall respond promptly, as required by the circumstances, to any request for assistance in resolving a dispute or consideration of a decision to withhold or withdraw life-sustaining treatment pursuant to paragraphs (b) and (c) of subdivision five of section twenty-nine hundred ninety-four-d of this article made by a person connected with the case. The committee shall permit persons connected with the case to present their views to the committee, and to have the option of being accompanied by an advisor when participating in a committee meeting.

(iii) The ethics review committee shall promptly provide the patient, where there is any indication of the patient's ability to comprehend the information, the surrogate, other persons on the surrogate list directly involved in the decision or dispute regarding the patient's care, any

parent or guardian of a minor patient directly involved in the decision or dispute regarding the minor patient's care, an attending practitioner, the hospital, and other persons the committee deems appropriate, with the following:

(A) notice of any pending case consideration concerning the patient, including, for patients, persons on the surrogate list, parents and guardians, information about the ethics review committee's procedures, composition and function; and

(B) the committee's response to the case, including a written statement of the reasons for approving or disapproving the withholding or withdrawal of life-sustaining treatment for decisions considered pursuant to subparagraph (ii) of paragraph (a) of subdivision five of section twenty-nine hundred ninety-four-d of this article. The committee's response to the case shall be included in the patient's medical record.

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

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

5. Access to medical records and information; patient confidentiality. Ethics review committee members and consultants shall have access to medical information and medical records necessary to perform their function under this article. Any such information or records disclosed to committee members, consultants, or others shall be kept confidential except to the extent necessary to accomplish the purposes of this article or as otherwise provided by law.

6. Ethics review committee confidentiality. Notwithstanding any other

provisions of law, the proceedings and records of an ethics review committee shall be kept confidential and shall not be released by committee members, committee consultants, or other persons privy to such proceedings and records; the proceedings and records of an ethics review committee shall not be subject to disclosure or inspection in any manner, including under article six of the public officers law or article thirty-one of the civil practice law and rules; and, no person shall testify as to the proceedings or records of an ethics review committee, nor shall such proceedings and records otherwise be admissible as evidence in any action or proceeding of any kind in any court or before any other tribunal, board, agency or person, except that:

(a) Ethics review committee proceedings and records, in cases where a committee approves or disapproves of the withholding or withdrawal of life-sustaining treatment pursuant to subdivision five of section twenty-nine hundred ninety-four-d of this article, or subdivision three of section twenty-nine hundred ninety-four-e of this article, may be obtained by or released to the department;

(b) Nothing in this subdivision shall prohibit the patient, the surrogate, other persons on the surrogate list, or a parent or guardian of a minor patient from voluntarily disclosing, releasing or testifying about committee proceedings or records; and

(c) Nothing in this subdivision shall prohibit the justice center for the protection of people with special needs or any agency or person within or under contract with the justice center which provides protection and advocacy services from requiring any information, report or record from a hospital in accordance with the provisions of section five hundred fifty-eight of the executive law.