

# Family Health Care Decisions Act

Article 29-CC of the Public Health Law  
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## **§ 2994-a. Definitions**

The following words or phrases, used in this article, shall have the following meanings, unless the context otherwise requires:

- 1.** “Adult” means any person who is eighteen years of age or older or has married.
- 2.** Attending practitioner means a physician, nurse practitioner or physician assistant, selected by or assigned to a patient pursuant to hospital policy, who has primary responsibility for the treatment and care of the patient. Where more than one physician, nurse practitioner or physician assistant shares such responsibility, or where a physician, nurse practitioner or physician assistant is acting on the attending practitioner’s behalf, any such physician, nurse practitioner or physician assistant may act as an attending practitioner pursuant to this article.
- 2-a.** “Attending nurse practitioner” means a nurse practitioner, selected by or assigned to a patient pursuant to hospital policy, who has primary responsibility for the treatment and care of the patient. Where more than one physician and/or nurse practitioner shares such responsibility, or where a physician or nurse practitioner is acting on the attending physician’s or attending nurse practitioner’s behalf, any such physician or nurse practitioner may act as an attending physician or attending nurse practitioner pursuant to this article.
- 3.** “Cardiopulmonary resuscitation” means measures, as specified in regulations promulgated by the commissioner, to restore cardiac function or to support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac function in the absence of an arrest.
- 4.** “Close friend” means any person, eighteen years of age or older, who is a close friend of the patient, or a relative of the patient (other than a spouse, adult child, parent, brother or sister), who has maintained such regular contact with the patient as to be familiar with the patient’s activities, health, and religious or moral beliefs, and who presents a signed statement to that effect to the attending practitioner.
- 5.** “Decision-making capacity” means the ability to understand and appreciate the nature and consequences of proposed health care, including the benefits and risks of and alternatives to proposed health care, and to reach an informed decision.
- 5-a.** “Decisions regarding hospice care” means the decision to enroll or disenroll in hospice, and consent to the hospice plan of care and modifications to that plan.
- 6.** “Developmental disability” means a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law.
- 7.** “Domestic partner” means a person who, with respect to another person:

**(a)** is formally a party in a domestic partnership or similar relationship with the other person, entered into pursuant to the laws of the United States or of any state, local or foreign jurisdiction, or registered as the domestic partner of the other person with any registry maintained by the employer of either party or any state, municipality, or foreign jurisdiction; or

**(b)** is formally recognized as a beneficiary or covered person under the other person's employment benefits or health insurance; or

**(c)** is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to: common ownership or joint leasing of real or personal property; common householding, shared income or shared expenses; children in common; signs of intent to marry or become domestic partners under paragraph (a) or (b) of this subdivision; or the length of the personal relationship of the persons.

Each party to a domestic partnership shall be considered to be the domestic partner of the other party. "Domestic partner" shall not include a person who is related to the other person by blood in a manner that would bar marriage to the other person in New York state. "Domestic partner" also shall not include any person who is less than eighteen years of age or who is the adopted child of the other person or who is related by blood in a manner that would bar marriage in New York state to a person who is the lawful spouse of the other person.

- 8.** "Emancipated minor patient" means a minor patient who is the parent of a child, or who is sixteen years of age or older and living independently from his or her parents or guardian.
- 9.** "Ethics review committee" means the interdisciplinary committee established in accordance with the requirements of section twenty-nine hundred ninety-four-m of this article.
- 10.** "General hospital" means a general hospital as defined in subdivision ten of section twenty-eight hundred one of this chapter excluding a ward, wing, unit or other part of a general hospital operated for the purpose of providing services for persons with mental illness pursuant to an operating certificate issued by the commissioner of mental health.
- 11.** "Guardian of a minor" or "guardian" means a health care guardian or a legal guardian of the person of a minor.
- 12.** "Health care" means any treatment, service, or procedure to diagnose or treat an individual's physical or mental condition. Providing nutrition or hydration orally, without reliance on medical treatment, is not health care under this article and is not subject to this article.
- 13.** "Health care agent" means a health care agent designated by an adult pursuant to article twenty-nine-C of this chapter.

- 14.** “Health care decision” means any decision to consent or refuse to consent to health care.
- 15.** “Health care guardian” means an individual appointed by a court, pursuant to subdivision four of section twenty-nine hundred ninety-four-r of this article, as the guardian of a minor patient solely for the purpose of deciding about life-sustaining treatment pursuant to this article.
- 16.** “Health care provider” means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice.
- 17.** “Health or social service practitioner” means a registered professional nurse, nurse practitioner, physician, physician assistant, psychologist or licensed clinical social worker, licensed or certified pursuant to the education law acting within his or her scope of practice.
- 17-a.** “Hospice” means a hospice as defined in article forty of this chapter, without regard to where the hospice care is provided.
- 18.** “Hospital” means a general hospital, a residential health care facility, or hospice.
- 19.** “Life-sustaining treatment” means any medical treatment or procedure without which the patient will die within a relatively short time, as determined by an attending physician to a reasonable degree of medical certainty. For the purpose of this article, cardiopulmonary resuscitation is presumed to be life-sustaining treatment without the necessity of a determination by an attending physician.
- 20.** “Mental hygiene facility” means a facility operated or licensed by the office of mental health or the office for people with developmental disabilities as defined in subdivision six of section 1.03 of the mental hygiene law.
- 21.** “Mental illness” means a mental illness as defined in subdivision twenty of section 1.03 of the mental hygiene law, and does not include dementia, such as Alzheimer’s disease, or other disorders related to dementia.
- 22.** “Minor” means any person who is not an adult.
- 22-a.** “Nurse practitioner” means a nurse practitioner certified pursuant to section sixty-nine hundred ten of the education law who is practicing in accordance with subdivision three of section sixty-nine hundred two of the education law.
- 23.** “Order not to resuscitate” means an order not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest.
- 24.** “Parent”, for the purpose of a health care decision about a minor patient, means a parent who has custody of, or who has maintained substantial and continuous contact with, the minor patient.
- 25.** “Patient” means a person admitted to a hospital.

- 26.** “Person connected with the case” means the patient, any person on the surrogate list, a parent or guardian of a minor patient, the hospital administrator, an attending physician, any other health or social services practitioner who is or has been directly involved in the patient’s care, and any duly authorized state agency, including the facility director or regional director for a patient transferred from a mental hygiene facility and the facility director for a patient transferred from a correctional facility.
- 27.** “Reasonably available” means that a person to be contacted can be contacted with diligent efforts by an attending physician, another person acting on behalf of an attending physician, or the hospital.
- 28.** “Residential health care facility” means a residential health care facility as defined in subdivision three of section twenty-eight hundred one of this chapter.
- 29.** “Surrogate” means the person selected to make a health care decision on behalf of a patient pursuant to section twenty-nine hundred ninety-four-d of this article.
- 30.** “Surrogate list” means the list set forth in subdivision one of section twenty-nine hundred ninety-four-d of this article.

## **§ 2994-b. Applicability; priority of certain other surrogate decision-making laws and regulations**

1. This article shall apply to health care decisions regarding health care provided in a hospital, and to decisions regarding hospice care without regard to where the decision is made or where the care is provided, for a patient who lacks decision-making capacity, except as limited by this section.
2. Prior to seeking or relying upon a health care decision by a surrogate for a patient under this article, the attending practitioner shall make reasonable efforts to determine whether the patient has a health care agent appointed pursuant to article twenty-nine-C of this chapter. If so, health care decisions for the patient shall be governed by such article, and shall have priority over decisions by any other person except the patient or as otherwise provided in the health care proxy.
3. 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 mental retardation or a developmental disability; it reasonably appears to the attending practitioner that the patient has mental retardation or a developmental disability; or the practitioner has reason to believe that the patient has been transferred from a mental hygiene facility operated or licensed by the office of mental health, then such physician, nurse practitioner or physician assistant shall make reasonable efforts to determine whether paragraphs (a), (b) or (c) of this subdivision are applicable:
  - (a) If the patient has a guardian appointed by a court pursuant to article seventeen-A of the surrogate's court procedure act, health care decisions for the patient shall be governed by section seventeen hundred fifty-b of the surrogate's court procedure act and not by this article.
  - (b) If a patient does not have a guardian appointed by a court pursuant to article seventeen-A of the surrogate's court procedure act but falls within the class of persons described in paragraph (a) of subdivision one of section seventeen hundred fifty-b of such act, decisions to withdraw or withhold life-sustaining treatment for the patient shall be governed by section seventeen hundred fifty-b of the surrogate's court procedure act and not by this article.
  - (c) If a health care decision for a patient cannot be made under paragraphs (a) or (b) of this subdivision, but consent for the 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. If, after reasonable efforts, it is determined that a health care decision for the patient cannot be made pursuant to subdivision two or three of this section, then the health care decision shall be made pursuant to this article.

## **§ 2994-c. Determination of incapacity**

**1. Presumption of capacity.** For purposes of this article, every adult shall be presumed to have decision-making capacity unless determined otherwise pursuant to this section or pursuant to court order, or unless a guardian is authorized to decide about health care for the adult pursuant to article eighty-one of the mental hygiene law.

**2. Initial determination by attending practitioner.** An attending practitioner shall make an initial determination that an adult patient lacks decision-making capacity to a reasonable degree of medical certainty. Such determination shall include an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity.

**3. Concurring determinations.** (a) An initial determination that a patient lacks decision-making capacity shall be subject to a concurring determination, independently made, where required by this subdivision. A concurring determination shall include an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity, and shall be included in the patient's medical record. Hospitals shall adopt written policies identifying the training and credentials of health or social services practitioners qualified to provide concurring determinations of incapacity.

**(b)**

**(i)** In a residential health care facility, 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.

**(ii)** In a general 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.

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

**(c)**

**(i)** If the attending practitioner makes an initial determination that a patient lacks decision-making capacity because of mental illness, either such physician must have the following qualifications, or another physician with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician licensed to practice medicine in New York state, who is a diplomate or eligible to be certified by the American Board of Psychiatry and Neurology or who is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible

to be certified by that board. A record of such consultation shall be included in the patient's medical record.

**(ii)** If the attending practitioner makes an initial determination that a patient lacks decision-making capacity because of a developmental disability, either such physician, nurse practitioner or physician assistant must have the following qualifications, or another professional with the following qualifications must independently determine whether the patient lacks decisionmaking capacity: a physician or clinical psychologist who either is employed by a developmental disabilities services office named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office for people with developmental disabilities, or has been approved by the commissioner of developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

**(d)** If an attending practitioner has determined that the patient lacks decision-making capacity and if the health or social services practitioner consulted for a concurring determination disagrees with the attending practitioner's determination, the matter shall be referred to the ethics review committee if it cannot otherwise be resolved.

**4.** Informing the patient and surrogate. Notice of a determination that a surrogate will make health care decisions because the adult patient has been determined to lack decision-making capacity shall promptly be given:

**(a)** to the patient, where there is any indication of the patient's ability to comprehend the information;

**(b)** to at least one person on the surrogate list highest in order of priority listed when persons in prior classes are not reasonably available pursuant to subdivision one of section twenty-nine hundred ninety-four-d of this article;

**(c)** if the patient 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.

**5.** Limited purpose of determination. A determination made pursuant to this section that an adult patient lacks decision-making capacity shall not be construed as a finding that the patient lacks capacity for any other purpose.

**6.** Priority of patient's decision. Notwithstanding a determination pursuant to this section that an adult patient lacks decision-making capacity, if the patient objects to the determination of incapacity, or to the choice of a surrogate or to a health care decision made by a surrogate or made pursuant to section twenty-nine hundred ninety-four-g of this article, the patient's objection or decision shall prevail unless: (a) a court of competent jurisdiction has determined that the



patient lacks decision-making capacity or the patient is or has been adjudged incompetent for all purposes and, in the case of a patient's objection to treatment, makes any other finding required by law to authorize the treatment, or (b) another legal basis exists for overriding the patient's decision.

**7. Confirmation of continued lack of decision-making capacity.** An attending practitioner shall confirm the adult patient's continued lack of decision-making capacity before complying with health care decisions made pursuant to this article, other than those decisions made at or about the time of the initial determination. A concurring determination of the patient's continued lack of decision-making capacity shall be required if the subsequent health care decision concerns the withholding or withdrawal of life-sustaining treatment. Health care providers shall not be required to inform the patient or surrogate of the confirmation.

## **§ 2994-d. Health care decisions for adult patients by surrogates**

1. Identifying the surrogate. One person from the following list from the class highest in priority when persons in prior classes are not reasonably available, willing, and competent to act, shall be the surrogate for an adult patient who lacks decision-making capacity. However, such person may designate any other person on the list to be surrogate, provided no one in a class higher in priority than the person designated objects:

- (a) A guardian authorized to decide about health care pursuant to article eighty-one of the mental hygiene law;
- (b) The spouse, if not legally separated from the patient, or the domestic partner;
- (c) A son or daughter eighteen years of age or older;
- (d) A parent;
- (e) A brother or sister eighteen years of age or older;
- (f) A close friend.

2. Restrictions on who may be a surrogate. An operator, administrator, or employee of a hospital or a mental hygiene facility from which the patient was transferred, or a physician, nurse practitioner or physician assistant who has privileges at the hospital or a health care provider under contract with the hospital may not serve as the surrogate for any adult who is a patient of such hospital, unless such individual is related to the patient by blood, marriage, domestic partnership, or adoption, or is a close friend of the patient whose friendship with the patient preceded the patient's admission to the facility. If a physician, nurse practitioner or physician assistant serves as surrogate, the physician, nurse practitioner or physician assistant shall not act as the patient's attending practitioner after his or her authority as surrogate begins.

3. Authority and duties of surrogate. (a) Scope of surrogate's authority.

(i) Subject to the standards and limitations of this article, the surrogate shall have the authority to make any and all health care decisions on the adult patient's behalf that the patient could make.

(ii) Nothing in this article shall obligate health care providers to seek the consent of a surrogate if an adult patient has already made a decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining treatment expressed either orally during hospitalization in the presence of two witnesses eighteen years of age or older, at least one of whom is a health or social services practitioner affiliated with the hospital, or in writing. If an attending practitioner relies on the patient's prior decision, the physician, nurse practitioner or physician assistant shall record the prior decision in the patient's medical record. If a surrogate has already been designated for the patient, the attending practitioner shall make reasonable efforts to notify the surrogate prior to

implementing the decision; provided that in the case of a decision to withdraw or withhold life-sustaining treatment, the attending practitioner shall make diligent efforts to notify the surrogate and, if unable to notify the surrogate, shall document the efforts that were made to do so.

**(b)** Commencement of surrogate's authority. The surrogate's authority shall commence upon a determination, made pursuant to section twenty-nine hundred ninety-four-c of this article, that the adult patient lacks decision-making capacity and upon identification of a surrogate pursuant to subdivision one of this section. In the event an attending practitioner determines that the patient has regained decision-making capacity, the authority of the surrogate shall cease.

**(c)** Right and duty to be informed. Notwithstanding any law to the contrary, the surrogate shall have the right to receive medical information and medical records necessary to make informed decisions about the patient's health care. Health care providers shall provide and the surrogate shall seek information necessary to make an informed decision, including information about the patient's diagnosis, prognosis, the nature and consequences of proposed health care, and the benefits and risks of and alternatives to proposed health care.

#### **4.** Decision-making standards.

**(a)** The surrogate shall make health care decisions:

**(i)** in accordance with the patient's wishes, including the patient's religious and moral beliefs; or

**(ii)** if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests. An assessment of the patient's best interests shall include: consideration of the dignity and uniqueness of every person; the possibility and extent of preserving the patient's life; the preservation, improvement or restoration of the patient's health or functioning; the relief of the patient's suffering; and any medical condition and such other concerns and values as a reasonable person in the patient's circumstances would wish to consider.

**(b)** In all cases, the surrogate's assessment of the patient's wishes and best interests shall be patient-centered; health care decisions shall be made on an individualized basis for each patient, and shall be consistent with the values of the patient, including the patient's religious and moral beliefs, to the extent reasonably possible.

**5.** Decisions to withhold or withdraw life-sustaining treatment. In addition to the standards set forth in subdivision four of this section, decisions by surrogates to withhold or withdraw life-sustaining treatment (including decisions to accept a hospice plan of care that provides for the withdrawal or withholding of life-sustaining treatment) shall be authorized only if the following conditions are satisfied, as applicable:

**(a)**

**(i)** Treatment would be an extraordinary burden to the patient and an attending practitioner determines, with the independent concurrence of another physician, nurse practitioner or physician assistant, that, to a reasonable degree of medical certainty and in accord with accepted medical standards, (A) the patient has an illness or injury which can be expected to cause death within six months, whether or not treatment is provided; or (B) the patient is permanently unconscious; or

**(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, 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.

**(b)** In a residential health care facility, a surrogate shall have the authority to refuse life-sustaining treatment under subparagraph (ii) of paragraph (a) of this subdivision only if 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 article. This requirement shall not apply to a decision to withhold cardiopulmonary resuscitation.

**(c)** In a general 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.

**(d)** Providing nutrition and hydration orally, without reliance on medical treatment, is not health care under this article and is not subject to this article.

**(e)** Expression of decisions. The surrogate shall express a decision to withdraw or withhold life-sustaining treatment either orally to an attending practitioner or in writing.

## **§ 2994-e. Decisions about life-sustaining treatment for minor patients**

**1.** Authority of parent or guardian. The parent or guardian of a minor patient shall have the authority to make decisions about life-sustaining treatment, including decisions to withhold or withdraw such treatment, subject to the provisions of this section and subdivision five of section twenty-nine hundred ninety-four-d of this article.

**2.** Decision-making standards and procedures for minor patient. (a) The parent or guardian of a minor patient shall make decisions in accordance with the minor's best interests, consistent with the standards set forth in subdivision four of section twenty-nine hundred ninety-four-d of this article, taking into account the minor's wishes as appropriate under the circumstances.

(b) An attending practitioner, in consultation with a minor's parent or guardian, shall determine whether a minor patient has decision-making capacity for a decision to withhold or withdraw life-sustaining treatment. If the minor has such capacity, a parent's or guardian's decision to withhold or withdraw life-sustaining treatment for the minor may not be implemented without the minor's consent.

(c) Where a parent or guardian of a minor patient has made a decision to withhold or withdraw life-sustaining treatment and an attending practitioner has reason to believe that the minor patient has a parent or guardian who has not been informed of the decision, including a non-custodial parent or guardian, an attending practitioner or someone acting on his or her behalf, shall make reasonable efforts to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the minor and, if so, shall make diligent efforts to notify that parent or guardian prior to implementing the decision.

**3.** Decision-making standards and procedures for emancipated minor patient. (a) If an attending practitioner determines that a patient is an emancipated minor patient with decision-making capacity, the patient shall have the authority to decide about life-sustaining treatment. Such authority shall include a decision to withhold or withdraw life-sustaining treatment if an attending practitioner and the ethics review committee determine that the decision accords with the standards for surrogate decisions for adults, and the ethics review committee approves the decision.

(b) If the hospital can with reasonable efforts ascertain the identity of the parents or guardian of an emancipated minor patient, the hospital shall notify such persons prior to withholding or withdrawing life-sustaining treatment pursuant to this subdivision.

## **§ 2994-f. Obligations of attending practitioner**

- 1.** An attending practitioner informed of a decision to withdraw or withhold life-sustaining treatment made pursuant to the standards of this article shall record the decision in the patient's medical record, review the medical basis for the decision, and shall either: (a) implement the decision, or (b) promptly make his or her objection to the decision and the reasons for the objection known to the decision-maker, and either make all reasonable efforts to arrange for the transfer of the patient to another physician, nurse practitioner or physician assistant, if necessary, or promptly refer the matter to the ethics review committee.
- 2.** If an attending practitioner has actual notice of the following objections or disagreements, he or she shall promptly refer the matter to the ethics review committee if the objection or disagreement cannot otherwise be resolved:
  - (a)** A health or social services practitioner consulted for a concurring determination that an adult patient lacks decision-making capacity disagrees with the attending practitioner's determination; or
  - (b)** Any person on the surrogate list objects to the designation of the surrogate pursuant to subdivision one of section twenty-nine hundred ninety-four-d of this article; or
  - (c)** Any person on the surrogate list objects to a surrogate's decision; or
  - (d)** A parent or guardian of a minor patient objects to the decision by another parent or guardian of the minor; or
  - (e)** A minor patient refuses life-sustaining treatment, and the minor's parent or guardian wishes the treatment to be provided, or the minor patient objects to an attending practitioner's determination about decision-making capacity or recommendation about life-sustaining treatment.
- 3.** Notwithstanding the provisions of this section or subdivision one of section twenty-nine hundred ninety-four-q of this article, if a surrogate directs the provision of life-sustaining treatment, the denial of which in reasonable medical judgment would be likely to result in the death of the patient, a hospital or individual health care provider that does not wish to provide such treatment shall nonetheless comply with the surrogate's decision pending either transfer of the patient to a willing hospital or individual health care provider, or judicial review in accordance with section twenty-nine hundred ninety-four-r of this article.

## **§ 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.

**(c)** The ethics review committee of the general hospital, residential health care facility or hospice, as applicable, including at least one physician or nurse practitioner who is not the patient's attending physician or attending

nurse 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.

**§ 2994-i. Specific policies for orders not to resuscitate**

An order not to resuscitate shall be written in the patient's medical record.  
Consent to an order not to resuscitate shall not constitute consent to withhold or withdraw treatment other than cardiopulmonary resuscitation.

## **§ 2994-j. Revocation of consent**

- 1.** A patient, surrogate, or parent or guardian of a minor patient may at any time revoke his or her consent to withhold or withdraw life-sustaining treatment by informing an attending practitioner or a member of the medical or nursing staff of the revocation.
- 2.** An attending practitioner informed of a revocation of consent made pursuant to this section shall immediately:
  - (a)** record the revocation in the patient's medical record;
  - (b)** cancel any orders implementing the decision to withhold or withdraw treatment; and
  - (c)** notify the hospital staff directly responsible for the patient's care of the revocation and any cancellations.
- 3.** Any member of the medical or nursing staff, other than a nurse practitioner or physician assistant, informed of a revocation made pursuant to this section shall immediately notify an attending practitioner of the revocation.

## **§ 2994-k. Implementation and review of decisions**

1. Hospitals shall adopt written policies requiring implementation and regular review of decisions to withhold or withdrew [withdraw]\* life-sustaining treatment in accordance with accepted medical standards. Hospitals shall also develop policies in accord with accepted medical standards regarding documentation of clinical determinations and decisions by surrogates and health care providers pursuant to this article.
2. If a decision to withhold or withdraw life-sustaining treatment has been made pursuant to this article, and an attending practitioner determines at any time that the decision is no longer appropriate or authorized because the patient has regained decision-making capacity or because the patient's condition has otherwise improved, the physician, nurse practitioner or physician assistant shall immediately:
  - (a) include such determination in the patient's medical record;
  - (b) cancel any orders or plans of care implementing the decision to withhold or withdraw life-sustaining treatment;
  - (c) notify the person who made the decision to withhold or withdraw treatment, or, if that person is not reasonably available, to at least one person on the surrogate list highest in order of priority listed when persons in prior classes are not reasonably available pursuant to subdivision one of section twenty-nine hundred ninety-four-d of this article; and
  - (d) notify the hospital staff directly responsible for the patient's care of any cancelled orders or plans of care.

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\* The bracketed word has been inserted by the Publisher.

## **§ 2994-I. Interinstitutional transfers**

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. 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. 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.

## **§ 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 persons identified in subparagraph (iii) of this paragraph have been informed of the committee's response to the case.



**(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.

## **§ 2994-n. Conscience objections**

**1.** Private hospitals. Nothing in this article shall be construed to require a private hospital to honor a health care decision made pursuant to this article if:

**(a)** The decision is contrary to a formally adopted policy of the hospital that is expressly based on sincerely held religious beliefs or sincerely held moral convictions central to the facility's operating principles;

**(b)** The hospital has informed the patient, family, or surrogate of such policy prior to or upon admission, if reasonably possible; and

**(c)** The patient is transferred promptly to another hospital that is reasonably accessible under the circumstances and willing to honor the decision and pending transfer the hospital complies with subdivision three of section twenty-nine hundred ninety-four-f of this article. If the patient's family or surrogate is unable or unwilling to arrange such a transfer, the hospital may intervene to facilitate such a transfer. If such a transfer is not effected, the hospital shall seek judicial relief in accordance with section twenty-nine hundred ninety-four-r of this article or honor the decision.

**2.** Individual health care providers. Nothing in this article shall be construed to require an individual as a health care provider to honor a health care decision made pursuant to this article if:

**(a)** the decision is contrary to the individual's sincerely held religious beliefs or sincerely held moral conviction; and

**(b)** the individual health care provider promptly informs the person who made the decision and the hospital of his or her refusal to honor the decision. In such event, the hospital shall promptly transfer responsibility for the patient to another individual health care provider willing to honor the decision. The individual health care provider shall cooperate in facilitating such transfer and comply with subdivision three of section twenty-nine hundred ninety-four-f of this article.

## **§ 2994-o. Immunity**

- 1. Ethics review committee.** No person shall be subject to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for acts performed reasonably and in good faith pursuant to this article as a member of or as a consultant to an ethics review committee or as a participant in an ethics review committee meeting.
- 2. Providers.** No health care provider or employee thereof shall be subjected to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith a health care decision made pursuant to this article or for other actions taken reasonably and in good faith pursuant to this article.
- 3. Surrogates and guardians.** No person shall be subjected to criminal or civil liability for making a health care decision reasonably and in good faith pursuant to this article or for other actions taken reasonably and in good faith pursuant to this article.

## **§ 2994-p. Liability for health care costs**

Liability for the cost of health care provided to an adult patient pursuant to this article shall be the same as if the health care were provided pursuant to the patient's decision. No person shall become liable for the cost of health care for a minor solely by virtue of making a decision as a guardian of a minor pursuant to this article.

## **§ 2994-q. Effect on other rights**

1. Nothing in this article creates, expands, diminishes, impairs, or supersedes any authority that an individual may have under law to make or express decisions, wishes, or instructions regarding health care on his or her own behalf, including decisions about life-sustaining treatment.
2. Nothing in this article shall affect existing law concerning implied consent to health care in an emergency.
3. Nothing in this article is intended to permit or promote suicide, assisted suicide, or euthanasia.
4. This article shall not affect existing law with respect to sterilization.
5. Nothing in this article diminishes the duty of parents and legal guardians under existing law to consent to treatment for minors.

## **§ 2994-r. Special proceeding authorized; court orders; health care guardian for minor patient**

- 1.** Special proceeding. Any person connected with the case and any member of the hospital ethics review committee may commence a special proceeding pursuant to article four of the civil practice law and rules in a court of competent jurisdiction with respect to any matter arising under this article.
- 2.** Court orders designating surrogate. A court of competent jurisdiction may designate any individual from the surrogate list to act as surrogate, regardless of that individual's priority on the list, if the court determines that such appointment would best accord with the patient's wishes or, if the patient's wishes are not reasonably known, with the patient's best interests. The court may remove a surrogate on the ground that the surrogate: (a) is not reasonably available, willing and competent to fulfill his or her obligations under this article; (b) is acting in bad faith; or (c) is the subject of an order of protection protecting the patient or has been arrested or charged for a criminal act that allegedly caused the patient's lack of capacity or substantially injured or impaired the health status of the patient, provided that the application of this provision in a particular case may be waived or modified in the interest of justice. Unless otherwise determined by a court, no surrogate decision made prior to an order designating a surrogate shall be deemed to have been invalid because of the issuance of a designating order.
- 3.** Court orders to withhold or withdraw life-sustaining treatment. A court of competent jurisdiction may authorize the withholding or withdrawal of life-sustaining treatment from a person if the court determines that the person lacks decision-making capacity, and withdrawing or withholding the treatment would accord with the standards set forth in subdivision five of section twenty-nine hundred ninety-four-d of this article.
- 4.** Health care guardian for a minor patient.
  - (a)** No appointment shall be made pursuant to this subdivision if a parent or legal guardian of the person is available, willing, and competent to decide about treatment for the minor.
  - (b)** The following persons may commence a special proceeding in a court of competent jurisdiction to seek appointment as the health care guardian of a minor patient solely for the purpose of deciding about life-sustaining treatment pursuant to this article:
    - (i)** the hospital administrator;
    - (ii)** an attending practitioner;
    - (iii)** the local commissioner of social services or the local commissioner of health, authorized to make medical treatment decisions for the minor pursuant to section three hundred eighty-three-b of the social services law; or
    - (iv)** an individual, eighteen years of age or older, who has assumed care of the minor for a substantial and continuous period of time.

**(c)** Notice of the proceeding shall be given to the persons identified in section seventeen hundred five of the surrogate's court procedure act.

**(d)** Notwithstanding any other provision of law, seeking appointment or being appointed as a health care guardian shall not otherwise affect the legal status or rights of the individual seeking or obtaining such appointment.

## **§ 2994-s. Remedy**

1. Any hospital, attending practitioner that refuses to honor a health care decision by a surrogate made pursuant to this article and in accord with the standards set forth in this article shall not be entitled to compensation for treatment, services, or procedures refused by the surrogate, except that this subdivision shall not apply:
  - (a) when a hospital, physician, nurse practitioner or physician assistant exercises the rights granted by section twenty-nine hundred ninety-four-n of this article, provided that the physician, nurse practitioner, physician assistant or hospital promptly fulfills the obligations set forth in section twenty-nine hundred ninety-four-n of this article;
  - (b) while a matter is under consideration by the ethics review committee, provided that the matter is promptly referred to and considered by the committee;
  - (c) in the event of a dispute between individuals on the surrogate list; or
  - (d) if the physician, nurse practitioner, physician assistant or hospital prevails in any litigation concerning the surrogate's decision to refuse the treatment, services or procedure. Nothing in this section shall determine or affect how disputes among individuals on the surrogate list are resolved.
2. The remedy provided in this section is in addition to and cumulative with any other remedies available at law or in equity or by administrative proceedings to a patient, a health care agent appointed pursuant to article twenty-nine-C of this chapter, or a person authorized to make health care decisions pursuant to this article, including injunctive and declaratory relief, and any other provisions of this chapter governing fines, penalties, or forfeitures.



## **§ 2994-t. Regulations**

1. The commissioner shall establish such regulations as may be necessary to implement this article.
2. The commissioner, in consultation with the commissioners of the office of mental health and the office for people with developmental disabilities, shall promulgate regulations identifying the credentials of health care professionals qualified to provide an independent determination, pursuant to subdivision three of section twenty-nine hundred ninety-four-c of this article, that a patient lacks decision-making capacity because of mental illness or developmental disability.

### **§ 2994-u. Rights to be publicized**

The commissioner shall prepare a statement summarizing the rights, duties, and requirements of this article and shall require that a copy of such statement be furnished to patients or to persons on the surrogate list known to the hospital, or to the parents or guardians of minor patients, at or prior to admission to the hospital, or within a reasonable time thereafter, and to each member of the hospital's staff directly involved with patient care.