

§ 2960. Legislative findings and purpose

The legislature finds that, although cardiopulmonary resuscitation has proved invaluable in the prevention of sudden, unexpected death, it is appropriate for an attending physician, in certain circumstances, to issue an order not to attempt cardiopulmonary resuscitation of a patient where appropriate consent has been obtained. The legislature further finds that there is a need to clarify and establish the rights and obligations of patients, their families, and health care providers regarding cardiopulmonary resuscitation and the issuance of orders not to resuscitate.

§ 2961. Definitions

The following words or phrases, as 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 is the parent of a child, or has married.
2. "Attending physician" means the physician selected by or assigned to a patient in a hospital or, for the purpose of provisions herein governing nonhospital orders not to resuscitate, a patient not in a hospital, who has primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such physician may act as the attending physician pursuant to this article.
3. "Capacity" means the ability to understand and appreciate the nature and consequences of an order not to resuscitate, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.
4. "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 functions in the absence of an arrest.
5. "Close friend" means any person, eighteen years of age or older, who presents an affidavit to an attending physician stating that he is a close friend of the patient and that he has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious or moral beliefs and stating the facts and circumstances that demonstrate such familiarity.
- 5-a. "Correctional facilities medical care personnel" means personnel engaged in providing health care at correctional facilities, as that term is defined in subdivision four of section two of the correction law.
6. "Developmental disability" means a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law.
7. "Emergency medical services personnel" means the personnel of a service engaged in providing initial emergency medical assistance, including but not limited to first responders, emergency medical technicians, and advanced emergency medical technicians.
8. "Health care agent" means a health care agent of the patient designated pursuant to article twenty-nine-C of this chapter.
9. "Hospital" means a general hospital as defined in subdivision ten of section twenty-eight hundred one of this chapter and a residential health care facility as defined in subdivision three of section twenty-eight hundred one of this chapter or a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law or a school named in section 13.17 of the mental hygiene law.

10. "Hospital emergency service personnel" means the personnel of the emergency service of a general hospital, as defined in subdivision ten of section twenty-eight hundred one of this chapter, including but not limited to emergency services attending physicians, emergency services registered professional nurses, and registered professional nurses, nursing staff and registered physicians assistants assigned to the general hospital's emergency service.
11. "Hospitalization" means the period during which a person is a patient in, or a resident of, a hospital.
12. "Medically futile" means that cardiopulmonary resuscitation will be unsuccessful in restoring cardiac and respiratory function or that the patient will experience repeated arrest in a short time period before death occurs.
13. "Mental hygiene facility" means a residential facility operated or licensed by the office of mental health or the office of mental retardation and developmental disabilities.
14. "Mental illness" means a mental illness as defined in subdivision twenty of section 1.03 of the mental hygiene law, provided, however, that mental illness shall not include dementia, such as Alzheimer's disease or other disorders related to dementia.
15. "Minor" means any person who is not an adult.
16. "Nonhospital order not to resuscitate" means an order, issued in accordance with section twenty-nine hundred seventy-seven of this article, that directs emergency medical services personnel, hospital emergency service personnel or correctional facilities medical care personnel not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest.
17. "Order not to resuscitate" means an order not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest.
18. "Parent" means a parent who has custody of the minor.
19. "Patient" means a person admitted to a hospital or, for the purpose of provisions herein governing nonhospital orders not to resuscitate, a person who has or may be issued a nonhospital order not to resuscitate.
20. "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending physician or another person acting on behalf of the attending physician or the hospital.
21. "Surrogate" means the person selected to make a decision regarding resuscitation on behalf of another person pursuant to section twenty-nine hundred sixty-five of this article.
22. "Surrogate list" means the list set forth in subdivision two of section twenty-nine hundred sixty-five of this article.
23. "Terminal condition" means an illness or injury from which there is no recovery, and which reasonably can be expected to cause death within one year.

§ 2962. Presumption in favor of resuscitation; lawfulness of order; effectiveness of order; duty to provide information; no duty to expand equipment

1. Every person admitted to a hospital shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless there is consent to the issuance of an order not to resuscitate as provided in this article.
2. It shall be lawful for the attending physician to issue an order not to resuscitate a patient, provided that

the order has been issued pursuant to the requirements of this article. The order shall be included in writing in the patient's chart. An order not to resuscitate shall be effective upon issuance.

3. Before obtaining, pursuant to this article, the consent of the patient, or of the surrogate of the patient, or parent or legal guardian of the minor patient, to an order not to resuscitate, the attending physician shall provide to the person giving consent information about the patient's diagnosis and prognosis, the reasonably foreseeable risks and benefits of cardiopulmonary resuscitation for the patient, and the consequences of an order not to resuscitate.

4. Nothing in this article shall require a hospital to expand its existing equipment and facilities to provide cardiopulmonary resuscitation.

5. (a) The provisions of article twenty-nine-C of this chapter, governing health care proxies and agents, take precedence over conflicting provisions of this article.

(b) When a patient who has a health care agent lacks capacity, the agent shall have the rights and authority that a patient with capacity would have under this article, subject to the terms of the health care proxy and article twenty-nine-C of this chapter.

§ 2963. Determination of capacity to make a decision regarding cardiopulmonary resuscitation

1. Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise pursuant to this section or pursuant to a court order. A lack of capacity shall not be presumed from the fact that a committee of the property or conservator has been appointed for the adult pursuant to article seventy-seven or seventy-eight of the mental hygiene law, or that a guardian has been appointed pursuant to article seventeen-A of the surrogate's court procedure act.

2. A determination that an adult patient lacks capacity shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be made in writing and shall contain such attending physician's opinion regarding the cause and nature of the patient's incapacity as well as its extent and probable duration. The determination shall be included in the patient's medical chart.

3. (a) At least one other physician, selected by a person authorized by the hospital to make such selection, must concur in the determination that an adult lacks capacity. The concurring determination shall be made in writing after personal examination of the patient and shall contain the physician's opinion regarding the cause and nature of the patient's incapacity as well as its extent and probable duration. Each concurring determination shall be included in the patient's medical chart.

(b) If the attending physician of a patient in a general hospital determines that a patient lacks capacity because of mental illness, the concurring determination required by paragraph (a) of this subdivision shall be provided by 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.

(c) If the attending physician determines that a patient lacks capacity because of a developmental disability, the concurring determination required by paragraph (a) of this subdivision shall be provided by a physician or psychologist employed by a school 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 of mental retardation and developmental disabilities, or who has been approved by the commissioner of mental retardation and developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or psychologist possess specialized training or three years experience in treating developmental disabilities.

4. Notice of a determination that the patient lacks capacity shall promptly be given (a) to the patient,

where there is any indication of the patient's ability to comprehend such notice, together with a copy of a statement prepared in accordance with section twenty-nine hundred seventy-eight of this article, (b) to the person on the surrogate list highest in order of priority listed, when persons in prior subparagraphs are not reasonably available, and (c) if the patient is in or is transferred from a mental hygiene facility, to the facility director. Nothing in this subdivision shall preclude or require notice to more than one person on the surrogate list.

5. A determination that a patient lacks capacity to make a decision regarding an order not to resuscitate pursuant to this section shall not be construed as a finding that the patient lacks capacity for any other purpose.

§ 2964. Decision-making by an adult with capacity

1. (a) The consent of an adult with capacity must be obtained prior to issuing an order not to resuscitate, except as provided in subdivision three of this section.

(b) If the adult has capacity at the time the order is to be issued, the consent must be obtained at or about such time, notwithstanding any prior oral or written consent.

2. (a) During hospitalization, an adult with capacity may express a decision consenting to an order not to resuscitate orally in the presence of at least two witnesses eighteen years of age or older, one of whom is a physician affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(b) Prior to or during hospitalization, an adult with capacity may express a decision consenting to an order not to resuscitate in writing, dated and signed in the presence of at least two witnesses eighteen years of age or older who shall sign the decision.

(c) An attending physician who is provided with or informed of a decision pursuant to this subdivision shall record or include the decision in the patient's medical chart if the decision has not been recorded or included, and either:

(i) promptly issue an order not to resuscitate the patient or issue an order at such time as the conditions, if any, specified in the decision are met, and inform the hospital staff responsible for the patient's care of the order; or

(ii) promptly make his or her objection to the issuance of such an order and the reasons therefor known to the patient and either make all reasonable efforts to arrange for the transfer of the patient to another physician, if necessary, or promptly submit the matter to the dispute mediation system.

(d) Prior to issuing an order not to resuscitate a patient who has expressed a decision consenting to an order not to resuscitate under specified medical conditions, the attending physician must make a determination, to a reasonable degree of medical certainty, that such conditions exist, and include the determination in the patient's medical chart.

3. (a) In the event that the attending physician determines, in writing, that, to a reasonable degree of medical certainty, an adult patient who has capacity would suffer immediate and severe injury from a discussion of cardiopulmonary resuscitation, the attending physician may issue an order not to resuscitate without obtaining the patient's consent, but only after:

(i) consulting with and obtaining the written concurrence of another physician selected by a person authorized by the hospital to make such selection, given after personal examination of the patient, concerning the assessment of immediate and severe injury to the patient from a discussion of

cardiopulmonary resuscitation;

(ii) ascertaining the wishes of the patient to the extent possible without subjecting the patient to a risk of immediate and severe injury;

(iii) including the reasons for not consulting the patient in the patient's chart; and

(iv) obtaining the consent of a health care agent who is available and would be authorized to make a decision regarding cardiopulmonary resuscitation if the patient lacked capacity or, if there is no such agent, a surrogate pursuant to section twenty-nine hundred sixty-five of this article, provided, however, that the consent of an agent or surrogate shall not be required if the patient has previously consented to an order not to resuscitate pursuant to subdivision two of this section.

(b) Where the provisions of this subdivision have been invoked, the attending physician shall reassess the patient's risk of injury from a discussion of cardiopulmonary resuscitation on a regular basis and shall consult the patient regarding resuscitation as soon as the medical basis for not consulting the patient no longer exists.

4. If the patient is in or is transferred from a mental hygiene facility, notice of the patient's consent to an order not to resuscitate shall be given to the facility director prior to the issuance pursuant to this section of an order not to resuscitate. Notification to the facility director shall not delay issuance of an order not to resuscitate. If the facility director concludes that the patient lacks capacity or that issuance of an order not to resuscitate may be inconsistent with the patient's wishes, the facility director shall submit the matter to the dispute mediation system of this article.

5. If the patient is in or is transferred from a correctional facility, notice of the patient's consent to an order not to resuscitate shall be given to the facility director and reasonable efforts shall be made to provide notice to an individual designated by the patient to receive such notification prior to the issuance of the order not to resuscitate. Notification to the facility director or the individual designated by the patient shall not unreasonably delay issuance of an order not to resuscitate.

§ 2965. Surrogate decision-making

1. (a) The consent of a surrogate or health care agent acting on behalf of an adult patient who lacks capacity or on behalf of an adult patient for whom consent by a surrogate or health care agent is authorized by subdivision three of section twenty-nine hundred sixty-four of this article must be obtained prior to issuing an order not to resuscitate the patient, except as provided in paragraph (b) of this subdivision or section twenty-nine hundred sixty-six of this article.

(b) The consent of a surrogate or health care agent shall not be required where the adult had, prior to losing capacity, consented to an order not to resuscitate pursuant to subdivision two of section twenty-nine hundred sixty-four of this article.

(c) A decision regarding cardiopulmonary resuscitation by a health care agent on a principal's behalf is governed by article twenty-nine-C of this chapter and shall have priority over decisions by any other person, except the patient or as otherwise provided in the health care proxy.

2. (a) One person from the following list, to be chosen in order of priority listed, when persons in the prior subparagraphs [FN1] are not reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate, shall have the authority to act as surrogate on behalf of the patient:

(i) a committee of the person or a guardian appointed pursuant to article seventeen-A of the surrogate's court procedure act, provided that this paragraph shall not be construed to require the appointment of a

committee of the person or guardian for the purpose of making the resuscitation decision;

(ii) the spouse;

(iii) a son or daughter eighteen years of age or older;

(iv) a parent;

(v) a brother or sister eighteen years of age or older; and

(vi) a close friend.

(b) After the surrogate has been identified, the name of such person shall be included in the patient's medical chart.

3. (a) The surrogate shall make a decision regarding cardiopulmonary resuscitation on the basis of the adult patient's wishes including a consideration of the patient's religious and moral beliefs, or, if the patient's wishes are unknown and cannot be ascertained, on the basis of the patient's best interests.

(b) Notwithstanding any law to the contrary, the surrogate shall have the same right as the patient to receive medical information and medical records.

(c) A surrogate may consent to an order not to resuscitate on behalf of an adult patient only if there has been a determination by an attending physician with the concurrence of another physician selected by a person authorized by the hospital to make such selection, given after personal examination of the patient that, to a reasonable degree of medical certainty:

(i) the patient has a terminal condition; or

(ii) the patient is permanently unconscious; or

(iii) resuscitation would be medically futile; or

(iv) resuscitation would impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the patient.

Each determination shall be included in the patient's medical chart.

4. (a) A surrogate shall express a decision consenting to an order not to resuscitate either (i) in writing, dated, and signed in the presence of one witness eighteen years of age or older who shall sign the decision, or (ii) orally, to two persons eighteen years of age or older, one of whom is a physician affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(b) The attending physician who is provided with the decision of a surrogate shall include the decision in the patient's medical chart and, if the surrogate has consented to the issuance of an order not to resuscitate, shall either:

(i) promptly issue an order not to resuscitate the patient and inform the hospital staff responsible for the patient's care of the order; or

(ii) promptly make the attending physician's objection to the issuance of such an order known to the surrogate and either make all reasonable efforts to arrange for the transfer of the patient to another physician, if necessary, or promptly refer the matter to the dispute mediation system.

(c) If the patient is in or is transferred from a mental hygiene facility, notice of a surrogate's consent to an

order not to resuscitate shall be given to the facility director prior to the issuance pursuant to this section of an order not to resuscitate. Notification to the facility director shall not delay issuance of an order not to resuscitate. If the facility director concludes that the patient has capacity or that issuance of an order not to resuscitate is otherwise inconsistent with this article, the facility director shall submit the matter to the dispute mediation system of this article.

(d) If the attending physician has actual notice of opposition to a surrogate's consent to an order not to resuscitate by any person on the surrogate list, or, if the patient is in or is transferred from a mental hygiene facility, by the facility director, the physician [FN1] shall submit the matter to the dispute mediation system and such order shall not be issued or shall be revoked in accordance with the provisions of subdivision three of section twenty-nine hundred seventy-two of this article.

5. If a surrogate has consented to an order not to resuscitate, notice of the surrogate's decision shall be given to the patient where there is any indication of the patient's ability to comprehend such notice, except if a determination has been made pursuant to subdivision three of section twenty-nine hundred sixty-four of this article. If the patient objects, an order not to resuscitate shall not be issued.

[FN1] So in original.

§ 2966. Decision-making on behalf of an adult patient without capacity for whom no surrogate is available

1. If no surrogate is reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate on behalf of an adult patient who lacks capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation, an attending physician (a) may issue an order not to resuscitate the patient, provided that the attending physician determines, in writing, that, to a reasonable degree of medical certainty, resuscitation would be medically futile, and another physician selected by a person authorized by the hospital to make such selection, after personal examination of the patient, reviews and concurs in writing with such determination, or, (b) shall issue an order not to resuscitate the patient, provided that, pursuant to subdivision one of section twenty-nine hundred seventy-six of this article, a court has granted a judgment directing the issuance of such an order.

2. If the patient is in or is transferred from a mental hygiene facility, prior to issuance of an order not to resuscitate pursuant to subdivision one of this section, notice of such order shall be given to the facility director. Notification to the facility director shall not delay issuance of an order not to resuscitate. If the facility director concludes that the patient has capacity or that issuance of an order not to resuscitate is otherwise inconsistent with this article, the facility director shall submit the matter to the dispute mediation system of this article.

3. Notwithstanding any other provision of this section, where a decision to consent to an order not to resuscitate has been made, notice of the decision shall be given to the patient where there is any indication of the patient's ability to comprehend such notice, except where a determination has been made pursuant to subdivision three of section twenty-nine hundred sixty-four of this article. If the patient objects, an order not to resuscitate shall not be issued.

§ 2967. Decision-making on behalf of a minor patient

1. An attending physician, in consultation with a minor's parent or legal guardian, shall determine whether a minor has the capacity to make a decision regarding resuscitation.

2. (a) The consent of a minor's parent or legal guardian and the consent of the minor, if the minor has capacity, must be obtained prior to issuing an order not to resuscitate the minor.

(b) Where the attending physician has reason to believe that there is another parent or a non-custodial

parent who has not been informed of a decision to issue an order not to resuscitate the minor, the attending physician, or someone acting on behalf of the attending physician, shall make reasonable efforts to determine if the uninformed parent or non-custodial parent has maintained substantial and continuous contact with the minor and, if so, shall make diligent efforts to notify that parent or non-custodial parent of the decision prior to issuing the order.

(c) If the minor is in or is transferred from a mental hygiene facility, notice of a decision to issue an order not to resuscitate the minor shall be given to the facility director prior to issuance of an order not to resuscitate. Notification to the facility director shall not delay issuance of an order not to resuscitate. If the facility director concludes that issuance of an order not to resuscitate is inconsistent with this article, the facility director shall submit the matter to the dispute mediation system of this article.

3. A parent or legal guardian may consent to an order not to resuscitate on behalf of a minor only if there has been a written determination by the attending physician, with the written concurrence of another physician selected by a person authorized by the hospital to make such selections given after personal examination of the patient, that, to a reasonable degree of medical certainty, the minor suffers from one of the medical conditions set forth in paragraph (c) of subdivision three of section twenty-nine hundred sixty-five of this article. Each determination shall be included in the patient's medical chart.

4. (a) A parent or legal guardian of a minor, in making a decision regarding cardiopulmonary resuscitation, shall consider the minor patient's wishes, including a consideration of the minor patient's religious and moral beliefs, and shall express a decision consenting to issuance of an order not to resuscitate either (i) in writing, dated and signed in the presence of one witness eighteen years of age or older who shall sign the decision, or (ii) orally, to two persons eighteen years of age or older, one of whom is a physician affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(b) The attending physician who is provided with the decision of a minor's parent or legal guardian, expressed pursuant to this subdivision, and of the minor if the minor has capacity, shall include such decision or decisions in the minor's medical chart and shall comply with the provisions of paragraph (b) of subdivision four of section twenty-nine hundred sixty-five of this article.

(c) If the attending physician has actual notice of the opposition of a parent or non-custodial parent to consent by another parent to an order not to resuscitate a minor, the physician shall submit the matter to the dispute mediation system and such order shall not be issued or shall be revoked in accordance with the provisions of subdivision three of section twenty-nine hundred seventy-two of this article.

§ 2968. Effect of order not to resuscitate on other treatment

Consent to the issuance of an order not to resuscitate shall not constitute consent to withhold or withdraw medical treatment other than cardiopulmonary resuscitation.

§ 2969. Revocation of consent to order not to resuscitate

1. A person may, at any time, revoke his or her consent to an order not to resuscitate himself or herself by making either a written or an oral declaration to a physician or member of the nursing staff at the hospital where he or she is being treated, or by any other act evidencing a specific intent to revoke such consent.

2. Any surrogate, parent, or legal guardian may at any time revoke his or her consent to an order not to resuscitate a patient by (a) notifying a physician or member of the nursing staff of the revocation of consent in writing, dated and signed, or (b) orally notifying the attending physician in the presence of a witness eighteen years of age or older.

3. Any physician who is informed of or provided with a revocation of consent pursuant to this section

shall immediately include the revocation in the patient's chart, cancel the order, and notify the hospital staff responsible for the patient's care of the revocation and cancellation. Any member of the nursing staff who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify a physician of such revocation.

§ 2970. Physician review of the order not to resuscitate

1. For each patient for whom an order not to resuscitate has been issued, the attending physician shall review the patient's chart to determine if the order is still appropriate in light of the patient's condition and shall indicate on the patient's chart that the order has been reviewed:

(a) for a patient, excluding outpatients described in paragraph (b) of this subdivision and alternate level of care patients, in a hospital, other than a residential health care facility, at least every seven days;

(b) for an outpatient whose order not to resuscitate is effective while the patient receives care in a hospital, each time the attending physician examines the patient, whether in the hospital or elsewhere, provided that the review need not occur more than once every seven days; and

(c) for a patient in a residential health care facility or an alternate level of care patient in a hospital, each time the patient is required to be seen by a physician but at least every sixty days.

Failure to comply with this subdivision shall not render an order not to resuscitate ineffective.

2. (a) If the attending physician determines at any time that an order not to resuscitate is no longer appropriate because the patient's medical condition has improved, the physician shall immediately notify the person who consented to the order. Except as provided in paragraph (b) of this subdivision, if such person declines to revoke consent to the order, the physician shall promptly (i) make reasonable efforts to arrange for the transfer of the patient to another physician or (ii) submit the matter to the dispute mediation system.

(b) If the order not to resuscitate was entered upon the consent of a surrogate, parent, or legal guardian and the attending physician who issued the order, or, if unavailable, another attending physician at any time determines that the patient does not suffer from one of the medical conditions set forth in paragraph (c) of subdivision three of section twenty-nine hundred sixty-five of this article, the attending physician shall immediately include such determination in the patient's chart, cancel the order, and notify the person who consented to the order and all hospital staff responsible for the patient's care of the cancellation.

(c) If an order not to resuscitate was entered upon the consent of a surrogate and the patient at any time gains or regains capacity, the attending physician who issued the order, or, if unavailable, another attending physician shall immediately cancel the order and notify the person who consented to the order and all hospital staff directly responsible for the patient's care of the cancellation.

§ 2971. Interinstitutional transfers

If a patient for whom an order not to resuscitate has been issued is transferred from a hospital to a different hospital the order shall remain effective, unless revoked pursuant to this article, until the attending physician first examines the transferred patient, whereupon the attending physician must either:

1. Issue an order continuing the prior order not to resuscitate. Such order may be issued without obtaining further consent from the patient, surrogate or parent pursuant to this article; or

2. Cancel the order not to resuscitate, provided the attending physician immediately notifies the person

who consented to the order and the hospital staff directly responsible for the patient's care of the cancellation. Such cancellation does not preclude the entry of a new order pursuant to this article.

§ 2972. Dispute mediation system

1. (a) Each hospital shall establish a mediation system for the purpose of mediating disputes regarding the issuance of orders not to resuscitate.

(b) The dispute mediation system shall be described in writing and adopted by the hospital's governing authority. It may utilize existing hospital resources, such as a patient advocate's office or hospital chaplain's office, or it may utilize a body created specifically for this purpose, but, in the event a dispute involves a patient deemed to lack capacity pursuant to (i) paragraph (b) of subdivision three of section twenty-nine hundred sixty-three of this article, the system must include a physician eligible to provide a concurring determination pursuant to such subdivision, or a family member or guardian of the person of a person with a mental illness of the same or similar nature, or (ii) paragraph (c) of subdivision three of section twenty-nine hundred sixty-three of this article, the system must include a physician eligible to provide a concurring determination pursuant to such subdivision, or a family member or guardian of the person of a person with a developmental disability of the same or similar nature.

2. The dispute mediation system shall be authorized to mediate any dispute, including disputes regarding the determination of the patient's capacity, arising under this article between the patient and an attending physician or the hospital that is caring for the patient and, if the patient is a minor, the patient's parent, or among an attending physician, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and, where the dispute involves a patient who is in or is transferred from a mental hygiene facility, the facility director.

3. After a dispute regarding the issuance of an order not to resuscitate has been submitted to the dispute mediation system, an order not to resuscitate shall not be issued or shall be revoked and may not be reissued until (a) the dispute has been resolved or the system has concluded its effort to resolve the dispute or (b) seventy-two hours have elapsed from the time of the submission of the dispute, whichever shall occur first. Persons participating in the dispute mediation system shall be informed of their right to judicial review.

4. If a dispute between a patient who expressed a decision rejecting cardiopulmonary resuscitation and an attending physician or the hospital that is caring for the patient is submitted to the dispute mediation system, and either:

(a) the dispute mediation system has concluded its efforts to resolve the dispute, or

(b) seventy-two hours have elapsed from the time of submission without resolution of the dispute, whichever shall occur first, the attending physician shall either: (i) promptly issue an order not to resuscitate the patient or issue the order at such time as the conditions, if any, specified in the decision are met, and inform the hospital staff responsible for the patient's care of the order; or (ii) promptly arrange for the transfer of the patient to another physician or hospital.

5. Persons appointed pursuant to this section to participate in the dispute mediation system shall not have authority to determine whether a do not resuscitate order shall be issued.

§ 2973. Judicial review

1. The patient, an attending physician, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and, in disputes involving a patient who is in or is transferred from a mental hygiene or correctional facility, the facility director, 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 dispute arising under this article, except that the decision of a patient not to consent to issuance of an order not to resuscitate may not be subjected to judicial review. In any proceeding brought pursuant to this subdivision challenging a decision regarding issuance of an order not to resuscitate on the ground that the decision is contrary to the patient's wishes or best interests, the person or entity challenging the decision must show, by clear and convincing evidence, that the decision is contrary to the patient's wishes including consideration of the patient's religious and moral beliefs, or, in the absence of evidence of the patient's wishes, that the decision is contrary to the patient's best interests. In any other proceeding brought pursuant to this subdivision, the court shall make its determination based upon the applicable substantive standards and procedures set forth in this article.

2. In any proceeding brought pursuant to this section, the court may issue an order, pursuant to the standards applicable to the issuance of a temporary restraining order according to section six thousand three hundred thirteen of the civil practice law and rules, which shall suspend the order not to resuscitate to permit review of the matter by the court.

3. Where a person or entity may invoke the dispute mediation system, no such proceeding shall be commenced until the dispute mediation system has concluded its efforts to resolve the dispute or seventy-two hours have elapsed from the submission of the dispute to the dispute mediation system, whichever shall occur first, provided, however, that the patient may commence an action for relief with respect to any dispute under this article at any time and provided further that the department of health or any other duly authorized state agency may commence an action or proceeding to enjoin a violation of this article at any time.

§ 2974. Immunity

1. No physician, health care professional, nurse's aide, hospital or person employed by or under contract with the hospital shall be subject to criminal prosecution, civil liability, or be deemed to have engaged in unprofessional conduct for carrying out in good faith pursuant to this article a decision regarding cardiopulmonary resuscitation by or on behalf of a patient or for those actions taken in compliance with the standards and procedures set forth in this article.

2. No physician, health care professional, nurse's aide, hospital, or person employed by or under contract with the hospital shall be subjected to criminal prosecution, civil liability, or be deemed to have engaged in unprofessional conduct for providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued, provided such physician or person;

(a) reasonably and in good faith was unaware of the issuance of an order not to resuscitate; or

(b) reasonably and in good faith believed that consent to the order not to resuscitate had been revoked or cancelled.

3. No person shall be subject to criminal prosecution or civil liability for consenting or declining to consent in good faith, on behalf of a patient, to the issuance of an order not to resuscitate pursuant to this article.

4. No person shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct for acts performed in good faith as a mediator in the dispute mediation system established by this article.

§ 2975. Effect of order not to resuscitate on insurance and health care services

1. No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of an order not to resuscitate notwithstanding any term of the policy to the contrary.

2. A person may not prohibit or require the issuance of an order not to resuscitate for an individual as a condition for such individual's being insured or for receiving health care services.

§ 2976. Judicially approved order not to resuscitate

1. If no surrogate is reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate on behalf of an adult patient who lacks capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation pursuant to this article, an attending physician or hospital may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, for a judgment directing the physician to issue an order not to resuscitate where the patient has a terminal condition, is permanently unconscious, or resuscitation would impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the patient, and issuance of an order not to resuscitate is consistent with the patient's wishes including a consideration of the patient's religious and moral beliefs or, in the absence of evidence of the patient's wishes, the patient's best interests.

2. Nothing in this article shall be construed to preclude a court of competent jurisdiction from approving the issuance of an order not to resuscitate under circumstances other than those under which such an order may be issued pursuant to this article.

§ 2977. Nonhospital orders not to resuscitate

1. Emergency medical services personnel, hospital emergency service personnel and correctional facilities medical care personnel shall honor nonhospital orders not to resuscitate, except as provided in subdivision ten of this section.

2. (a) A nonhospital order not to resuscitate shall be governed as an order not to resuscitate pursuant to this article, except as otherwise specifically provided in this section.

(b) The requirements for dispute mediation established in this article shall only apply with respect to patients during hospitalization.

3. A nonhospital order not to resuscitate may be issued during hospitalization to take effect after hospitalization, or may be issued for a person who is not a patient in, or a resident of, a hospital.

4. [As amended by L.1993, c. 308. See, also, subd. 4 below.] Consent to a nonhospital order not to resuscitate shall be governed by sections twenty-nine hundred sixty-four through twenty-nine hundred sixty-seven of this article, provided, however, (a) that an adult with capacity, whether or not hospitalized or a health care agent, may also consent to a nonhospital order not to resuscitate orally to the attending physician, and (b) when the concurrence of a second physician is sought to fulfill the requirements for the issuance of an order not to resuscitate for hospice and home care patients, such second physician shall be selected by the hospice medical director or hospice nurse coordinator designated by the medical director or by the home care services agency director of patient care services, as appropriate to the patient.

4. [As amended by L.1993, c. 577. See, also, subd. 4 above.] (a) Consent to a nonhospital order not to resuscitate shall be governed by sections twenty-nine hundred sixty-four through twenty-nine hundred sixty-seven of this article, provided, however, that an adult with capacity, whether or not hospitalized or a health care agent, may also consent to a nonhospital order not to resuscitate orally to the attending physician.

(b) When the concurrence of a second physician is sought to fulfill the requirements for the issuance of an order not to resuscitate for patients in a correctional facility, such second physician shall be selected

by the chief medical officer of the department of corrections or his or her designee.

This paragraph shall not apply to the issuance of an order not to resuscitate pursuant to section two thousand nine hundred sixty-six of this article.

5. The attending physician shall record the issuance of a nonhospital order not to resuscitate in the patient's medical chart.

6. A nonhospital order not to resuscitate shall be issued upon a standard form prescribed by the commissioner. The commissioner shall also develop a standard bracelet that may be worn by a patient with a nonhospital order not to resuscitate to identify that status; provided, however, that no person may require a patient to wear such a bracelet and that no person may require a patient to wear such a bracelet as a condition for honoring a nonhospital order not to resuscitate or providing health care services.

7. An attending physician who has issued a nonhospital order not to resuscitate, and who transfers care of the patient to another physician, shall inform the physician of the order.

8. For each patient for whom a nonhospital order not to resuscitate has been issued, the attending physician shall review whether the order is still appropriate in light of the patient's condition each time he or she examines the patient, whether in the hospital or elsewhere, but at least every ninety days, provided that the review need not occur more than once every seven days. The attending physician shall record the review in the patient's medical chart record provided, however, that a registered nurse who provides direct care to the patient may record the review in the chart record at the direction of the physician. In such case, the attending physician shall include a confirmation of the review in the patient's medical chart within fourteen days of such review. Failure to comply with this subdivision shall not render a nonhospital order not to resuscitate ineffective.

9. A person who has consented to a nonhospital order not to resuscitate may at any time revoke his or her consent to the order by any act evidencing a specific intent to revoke such consent. Any health care professional informed of a revocation of consent to a nonhospital order not to resuscitate shall notify the attending physician of the revocation. An attending physician who is informed that a nonhospital order not to resuscitate has been revoked shall record the revocation in the patient's medical chart, cancel the order and make diligent efforts to retrieve the form issuing the order, and the standard bracelet, if any.

10. Emergency medical services personnel, hospital emergency service personnel or correctional facilities medical care personnel who are provided with a nonhospital order not to resuscitate, or who identify the standard bracelet on the patient's body, shall comply with the terms of such order; provided, however, that:

(a) emergency medical services personnel, hospital emergency service personnel or correctional facilities medical care personnel may disregard the order if:

(i) they believe in good faith that consent to the order has been revoked, or that the order has been cancelled; or

(ii) family members or others on the scene, excluding such personnel, object to the order and physical confrontation appears likely; and

(b) hospital emergency service physicians may direct that the order be disregarded if other significant and exceptional medical circumstances warrant disregarding the order.

11. If a patient with a nonhospital order not to resuscitate is admitted to a hospital, the order shall be treated as an order not to resuscitate for a patient transferred from another hospital, and shall be governed by section twenty-nine hundred seventy-one of this article.

12. No person shall be subjected to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith pursuant to this section a nonhospital order not to resuscitate, for disregarding a nonhospital order pursuant to subdivision ten of this section, or for other actions taken reasonably and in good faith pursuant to this section.

13. The commissioner may authorize the use of one or more alternative forms for issuing a nonhospital order not to resuscitate (in place of the standard form prescribed by the commissioner under subdivision six of this section). Such alternative form or forms may also be used to issue a non-hospital do not intubate order. Any such alternative forms intended for use for persons with mental retardation or developmental disabilities or persons with mental illness who are incapable of making their own health care decisions or who have a guardian of the person appointed pursuant to article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act must also be approved by the commissioner of mental retardation and developmental disabilities or the commissioner of mental health, as appropriate. An alternative form under this subdivision shall otherwise conform with applicable federal and state law. This subdivision does not limit, restrict or impair the use of an alternative form for issuing an order not to resuscitate in a general hospital or residential health care facility under article twenty-eight of this chapter or a hospital under subdivision ten of section 1.03 of the mental hygiene law or a school under section 13.17 of the mental hygiene law.

§ 2978. Regulations

1. Except as provided in subdivision two of this section, the commissioner of health (a) subject to the approval of the state hospital review and planning council by a majority vote of its members, shall establish such regulations as may be necessary for the implementation of this article and (b) may provide suggested forms that may be used for the purpose of expressing a decision regarding cardiopulmonary resuscitation or for the purpose of designating a surrogate, pursuant to this article.

2. The commissioners of mental health and mental retardation and developmental disabilities, in consultation with the commissioner of health, shall establish such regulations as may be necessary for implementation of this article with respect to those persons in mental hygiene facilities.

§ 2979. Rights to be publicized

1. The commissioner of health, after consultation with the commissioners of mental health and mental retardation and developmental disabilities, shall prepare a statement summarizing the rights, duties, and requirements of this article and shall require that a copy of such statement:

(a) be furnished by the hospital to patients or to persons on the surrogate list known to the hospital at or prior to the time of admission to the hospital, and at the time of the first decision made pursuant to sections twenty-nine hundred sixty-four, twenty-nine hundred sixty-five, twenty-nine hundred sixty-six, or twenty-nine hundred sixty-seven of this article or as soon thereafter as practicable and to each member of the hospital's staff involved in the provision of medical care; and

(b) is posted in a public place in each hospital.

2. The statement of rights required by this section may be included in any other statement of patient's rights required by other provisions of this chapter.