

ASSEMBLY, No. 4098

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 23, 2011

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Provides for designation of surrogates to make health care decisions for certain patients and decision-making process for patients without surrogates; establishes demonstration program for transition of isolated patients from inpatient care to post-acute care.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2011)

1 AN ACT concerning the making of health care decisions for certain
2 patients and supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in sections 1 through 6 of this act:

8 “Advance directive” means an advance directive for health care
9 as defined in section 3 of P.L.1991, c.201 (C.26:2H-55).

10 “Close friend” means a person, 18 years of age or older, who is
11 a friend of the patient, or a relative of the patient other than a
12 spouse, partner in a civil union couple, domestic partner, child,
13 parent, brother, or sister, who has maintained such regular contact
14 with the patient as to be familiar with the patient's activities, health,
15 and religious or moral beliefs, and who presents a signed statement
16 to that effect to the patient’s attending physician.

17 “Commissioner” means the Commissioner of Health and Senior
18 Services.

19 “Decision-making capacity” means a patient's ability to
20 understand and appreciate the nature and consequences of a
21 particular health care decision, including the benefits and risks of
22 that decision, and alternatives to any proposed health care, and to
23 reach an informed decision.

24 “Department” means the Department of Health and Senior
25 Services.

26 “Emergency” means a sudden, acute, and unanticipated medical
27 crisis that requires that treatment be provided to the patient in order
28 to avoid injury, impairment, or death.

29 “Health care decision” means a decision to accept, withdraw, or
30 refuse a treatment, service, or procedure used to diagnose, treat, or
31 care for a person’s physical or mental condition, including life-
32 sustaining treatment.

33 “Health care facility” means a general hospital, nursing home, or
34 assisted living facility licensed pursuant to P.L.1971, c.136
35 (C.26:2H-1 et seq.).

36 “Health care professional” means a health care professional who
37 is licensed or otherwise authorized to practice a health care
38 profession pursuant to Titles 45 or 52 of the Revised Statutes and is
39 currently engaged in that practice.

40 “Health or social service practitioner” means a physician,
41 advanced practice nurse, physician assistant, psychologist, or
42 licensed clinical social worker who is authorized to practice
43 pursuant to law and acting within that person’s scope of practice.

44 “Life-sustaining treatment” means the use of any medical device
45 or procedure, artificially provided fluids and nutrition, drugs,
46 surgery, or therapy that uses mechanical or other artificial means to
47 sustain, restore, or supplant a vital bodily function, and thereby
48 increase the expected life span of a patient.

1 "Major medical treatment" means a treatment, service, or
2 procedure used to diagnose or treat a patient's physical or mental
3 condition that involves any of the following: the use of general
4 anesthesia; any significant risk to the patient; any significant
5 invasion of bodily integrity requiring an incision, producing
6 substantial pain, discomfort, or debilitation, or having a significant
7 recovery period; the transfer of the patient to a different health care
8 facility; the use of physical restraints, as specified in regulations
9 adopted by the commissioner, except in an emergency; or the use of
10 psychoactive medications, except when provided as part of post-
11 operative care or in response to an acute illness and when treatment
12 is reasonably expected to be administered over a period of 48 hours
13 or less, or when provided in an emergency.

14 "Patient" means a person who is under the care of a physician.

15 "Patient's representative" means a person who is designated by a
16 patient or otherwise authorized under law to make health care
17 decisions on the patient's behalf if the patient lacks decision-
18 making capacity.

19 "Physician" means a person who is licensed to practice medicine
20 and surgery pursuant to chapter 9 of Title 45 of the Revised
21 Statutes.

22 "Resuscitative measures" means cardiopulmonary resuscitation
23 provided in the event that a patient suffers a cardiac or respiratory
24 arrest.

25 "Routine medical treatment" means a treatment, service, or
26 procedure used to diagnose or treat a patient's physical or mental
27 condition, such as the administration of medication, the extraction
28 of bodily fluids for analysis, or dental care performed with a local
29 anesthetic, for which a health care facility or health care
30 professional does not ordinarily seek specific consent from a patient
31 or the patient's representative. "Routine medical treatment" shall
32 not include the long-term provision of treatment, such as ventilator
33 support or a nasogastric tube, but shall include such treatment when
34 it is provided as part of post-operative care or in response to an
35 acute illness and recovery is reasonably expected within one month
36 or less.

37 "Surrogate" means a person who is designated by a health care
38 facility pursuant to this act to make health care decisions for a
39 patient who is determined to lack decision-making capacity.

40

41 2. a. A health care facility shall establish policies and
42 procedures, in accordance with the provisions of this section, to
43 provide for the making of health care decisions by a surrogate, who
44 shall be designated by the health care facility, for an adult patient
45 who is determined, pursuant to this section, to meet all of the
46 following conditions:

47 (1) lacks decision-making capacity;

48 (2) does not have a patient's representative; and

1 (3) has not executed an advance directive.

2 b. (1) The patient's attending physician shall make an initial
3 determination that the patient lacks decision-making capacity to a
4 reasonable degree of medical certainty, including, but not limited
5 to, an assessment of the cause and extent of the patient's incapacity
6 and the likelihood that the patient will regain decision-making
7 capacity.

8 (2) An initial determination that a patient lacks decision-making
9 capacity shall be subject to a concurring determination that the
10 patient lacks decision-making capacity to a reasonable degree of
11 medical certainty, independently made by a health or social service
12 practitioner, if the health care decision concerns the withdrawal or
13 withholding of life-sustaining treatment.

14 (3) The concurring determination shall include, but not be
15 limited to, an assessment of the cause and extent of the patient's
16 incapacity and the likelihood that the patient will regain decision-
17 making capacity.

18 (4) A record of the concurring determination shall be included in
19 the patient's medical record.

20 (5) A health care facility shall adopt written policies identifying
21 the training and credentials of health or social service practitioners
22 qualified to provide concurring determinations of incapacity.

23 (6) A determination that a patient lacks decision-making
24 capacity because the person has a mental illness as defined in
25 section 2 of P.L.1987, c.116 (C.30:4-27.2) shall only be made if the
26 patient's attending physician who makes the initial determination,
27 or another physician who independently makes a concurring
28 determination, is: a diplomate of, or eligible to be certified by, the
29 American Board of Psychiatry and Neurology; or certified, or
30 eligible to be certified, by the American Osteopathic Board of
31 Neurology and Psychiatry.

32 (7) A determination that a patient lacks decision-making
33 capacity because the person has a developmental disability as
34 defined in section 3 of P.L.1977, c.82 (C.30:6D-3) shall only be
35 made if the patient's attending physician who makes the initial
36 determination, or another health care professional who
37 independently makes a concurring determination, is a physician or
38 clinical psychologist who: has been employed for a minimum of
39 two years to render care and service in a facility for persons with
40 developmental disabilities as defined in section 3 of P.L.1977, c.82
41 (C.30:6D-3); or has been approved by the Director of the Division
42 of Developmental Disabilities in the Department of Human Services
43 in accordance with regulations adopted by the director. The
44 regulations shall require that a physician or clinical psychologist
45 possess specialized training or three years of experience in treating
46 developmental disabilities.

47 (8) If the patient's attending physician has determined that the
48 patient lacks decision-making capacity but the person making a

1 concurring determination pursuant to this subsection disagrees with
2 the attending physician's determination, they shall seek to resolve
3 the disagreement by means of procedures and practices established
4 by the health care facility, including, but not limited to, consultation
5 with an institutional ethics committee, or with a person designated
6 by the health care facility for this purpose.

7 c. A health care facility is authorized to designate a surrogate to
8 make health care decisions for an adult patient who has been
9 determined to lack decision-making capacity pursuant to this
10 section, and shall provide prompt notice of that determination and
11 designation to:

12 (1) the patient, if the health care facility has any indication of
13 the patient's ability to comprehend the information; and

14 (2) at least one person on the surrogate list, set forth in
15 subsection g. of this section, who is highest in order of priority
16 listed when persons in prior classes are not reasonably available
17 pursuant to this section.

18 d. A determination made pursuant to this section that an adult
19 patient lacks decision-making capacity shall not be construed as a
20 finding that the patient lacks capacity for any other purpose.

21 e. Notwithstanding a determination pursuant to this section that
22 an adult patient lacks decision-making capacity, if the patient
23 objects to the determination of incapacity, or to the choice of a
24 surrogate or to a health care decision made for that patient pursuant
25 to this section, the patient's objection shall prevail, unless:

26 (1) a court of competent jurisdiction has determined that the
27 patient lacks decision-making capacity or the patient is or has been
28 adjudged incapacitated, in accordance with N.J.S.3B:1-2, for all
29 purposes and, in the case of a patient's objection to treatment,
30 makes any other finding required by law to authorize the treatment,
31 or

32 (2) another legal basis exists for overriding the patient's decision.

33 f. An adult patient's attending physician shall confirm the
34 patient's continued lack of decision-making capacity before
35 complying with health care decisions made pursuant to this section,
36 other than those decisions made at or about the time of the initial
37 determination that the patient lacks decision-making capacity.
38 Neither the health care facility nor any person shall be required to
39 inform the patient or surrogate of any such confirmation. A
40 concurring determination of the patient's continued lack of decision-
41 making capacity shall be required if the subsequent health care
42 decision concerns the withholding or withdrawal of life-sustaining
43 treatment.

44 g. A health care facility shall designate one person from the
45 following list, as applicable, from the class highest in priority when
46 persons in prior classes are not reasonably available, willing, and
47 competent to act, to serve as surrogate for an adult patient who is
48 determined to lack decision-making capacity pursuant to this

1 section; except that the designated person may designate any other
2 person on the list to be surrogate, provided no one in a class higher
3 in priority than the person so designated objects:

- 4 (1) the patient's spouse, partner in a civil union couple, or
5 domestic partner, if not legally separated from the patient;
- 6 (2) the patient's son or daughter 18 years of age or older;
- 7 (3) the patient's parent;
- 8 (4) the patient's brother or sister 18 years of age or older;
- 9 (5) a close friend of the patient.

10 h. An operator, administrator, or employee of a health care
11 facility to which a patient has been admitted or from which a patient
12 was transferred, or a physician who has privileges at such a health
13 care facility, or a health care professional or other person under
14 contract with such a health care facility may not serve as the
15 surrogate for an adult who is a patient at that facility, unless that
16 person is related to the patient by blood, marriage, civil union,
17 domestic partnership, or adoption, or is a close friend of the patient
18 whose friendship with the patient preceded the patient's admission
19 to the facility. If a physician serves as surrogate, the physician shall
20 not act as the patient's attending physician after his authority as
21 surrogate begins.

22 i. (1) A surrogate who is designated pursuant to this section
23 shall, subject to the provisions thereof, have the authority to make
24 any health care decision on the adult patient's behalf that the patient
25 could make.

26 (2) Nothing in this section shall obligate a health care facility or
27 a health care professional to seek the consent of a surrogate if an
28 adult patient has already made a decision about the proposed health
29 care, expressed orally or in writing or, with respect to a decision to
30 withdraw or withhold life-sustaining treatment, expressed either
31 orally during the patient's stay in the health care facility in the
32 presence of two witnesses 18 years of age or older, at least one of
33 whom is a health or social service practitioner affiliated with the
34 health care facility, or in writing. If an attending physician relies on
35 the patient's prior decision, the physician shall record the prior
36 decision in the patient's medical record. If a surrogate has already
37 been designated for the patient, the attending physician shall make
38 reasonable efforts to notify the surrogate prior to implementing the
39 decision; provided that in the case of a decision to withdraw or
40 withhold life-sustaining treatment, the attending physician shall
41 make diligent efforts to notify the surrogate and, if unable to notify
42 the surrogate, shall document the efforts that were made to do so.

43 (3) The surrogate's authority shall commence upon a
44 determination, made pursuant to this section, that the adult patient
45 lacks decision-making capacity and upon identification of a
46 surrogate pursuant to this section. In the event that an attending
47 physician determines that the patient has regained decision-making
48 capacity, the authority of the surrogate shall cease.

1 (4) Notwithstanding any law to the contrary, the surrogate shall
2 have the right to receive medical information and medical records
3 necessary to make informed decisions about the patient's health
4 care. The surrogate shall seek, and the applicable health care
5 facility or health care professional shall provide, information
6 necessary to make such decisions, including information about: the
7 patient's diagnosis and prognosis; the nature and consequences of
8 proposed health care for the patient; and alternatives to the
9 proposed health care, including the benefits and risks thereof.

10 j. (1) The surrogate shall make health care decisions for the
11 patient:

12 (a) in accordance with the patient's wishes or values, including,
13 but not limited to, the patient's religious or moral beliefs; or

14 (b) if the patient's wishes or values are not reasonably known
15 and cannot with reasonable diligence be ascertained, in accordance
16 with the patient's best interests.

17 (2) Pursuant to subparagraph (b) of paragraph (1) of this
18 subsection, the surrogate shall include in his assessment of the
19 patient's best interests:

20 (a) consideration of the dignity and uniqueness of the patient;

21 (b) the possibility and extent of preserving the patient's life;

22 (c) the preservation, improvement, or restoration of the patient's
23 health or functioning;

24 (d) the relief of the patient's suffering; and

25 (e) any medical condition and such other concerns and values as
26 a reasonable person in the patient's circumstances would wish to
27 consider.

28 k. (1) A decision by the surrogate to withhold or withdraw
29 life-sustaining treatment from the patient shall be authorized only if
30 the attending physician determines, with the independent
31 concurrence of another physician and to a reasonable degree of
32 medical certainty and in accordance with accepted medical
33 standards, that:

34 (a) the patient has an illness or injury that can be expected to
35 cause death within six months, whether or not treatment is
36 provided, or that the patient is permanently unconscious, and the
37 provision or continuation of treatment would be an extraordinary
38 burden to the patient; or

39 (b) the patient has an irreversible or incurable condition, and the
40 provision or continuation of treatment would involve such pain or
41 suffering for, or otherwise be so extraordinarily burdensome to, the
42 patient that it would reasonably be deemed inhumane under the
43 circumstances.

44 (2) A surrogate shall have the authority to refuse life-sustaining
45 treatment for a patient in a health care facility other than a general
46 hospital only if the institutional ethics committee, including at least
47 one physician who is not directly responsible for the patient's care,
48 or a court of competent jurisdiction, reviews the decision and

1 determines that it meets the standards set forth in this section. This
2 requirement shall not apply to a decision to withhold resuscitative
3 measures.

4 (3) If the attending physician of a patient in a general hospital
5 objects to a surrogate's decision to withhold or withdraw nutrition
6 and hydration provided by means of medical treatment from the
7 patient, the decision shall not be implemented until the institutional
8 ethics committee, including at least one physician who is not
9 directly responsible for the patient's care, or a court of competent
10 jurisdiction, reviews the decision and determines that it meets the
11 standards set forth in this section. The provisions of this paragraph
12 shall not be construed to apply to nutrition and hydration that is
13 provided to a patient orally and without reliance on medical
14 treatment.

15 (4) The surrogate shall express a decision to withdraw or
16 withhold life-sustaining treatment from the patient either orally to
17 the attending physician or in writing.

18 1. (1) The parent or guardian of a minor patient shall have the
19 authority to make decisions about life-sustaining treatment,
20 including decisions to withhold or withdraw such treatment, subject
21 to the provisions of this subsection.

22 (2) The parent or guardian of a minor patient shall make
23 decisions in accordance with the minor's best interests, consistent
24 with the standards set forth in subsection j. of this section, taking
25 into account the minor's wishes, as appropriate under the
26 circumstances.

27 (3) (a) An attending physician, in consultation with a minor's
28 parent or guardian, shall determine whether a minor patient has
29 decision-making capacity for a decision to withhold or withdraw
30 life-sustaining treatment. If the minor has such capacity, a parent's
31 or guardian's decision to withhold or withdraw life-sustaining
32 treatment for the minor may not be implemented without the
33 minor's consent.

34 (b) When a parent or guardian of a minor patient has made a
35 decision to withhold or withdraw life-sustaining treatment and an
36 attending physician has reason to believe that the minor patient has
37 a parent or guardian who has not been informed of the decision,
38 including a noncustodial parent or guardian, the attending physician
39 or someone acting on his behalf shall make reasonable efforts to
40 determine if the uninformed parent or guardian has maintained
41 substantial and continuous contact with the minor and, if so, shall
42 make diligent efforts to notify that parent or guardian prior to
43 implementing the decision.

44 m. (a) An attending physician, upon being informed of a
45 decision to withdraw or withhold life-sustaining treatment made
46 pursuant to the standards of this section, shall record the decision in
47 the patient's medical record, review the medical basis for the
48 decision, and either:

1 (i) implement the decision, or
2 (ii) promptly make his objection to the decision and the reasons
3 for the objection known to the decision-maker, and either make all
4 reasonable efforts to arrange for the transfer of the patient to
5 another physician, if necessary, or promptly refer the matter to the
6 institutional ethics committee.

7 (b) An attending physician who has actual notice of any of the
8 following objections or disagreements shall promptly refer the
9 matter to the institutional ethics committee if the objection or
10 disagreement cannot otherwise be resolved:

11 (i) a health or social service practitioner consulted for a
12 concurring determination that an adult patient lacks decision-
13 making capacity disagrees with the attending physician's
14 determination;

15 (ii) a person on the surrogate list objects to the designation of
16 the surrogate pursuant to subsection g. of this section;

17 (iii) A person on the surrogate list objects to a health care
18 decision made by the surrogate; or

19 (iv) a parent or guardian of a minor patient objects to a health
20 care decision made by another parent or guardian of the minor.

21 n. Notwithstanding the provisions of this section to the contrary,
22 if a surrogate directs the provision of life-sustaining treatment for a
23 patient, the denial of which in reasonable medical judgment would
24 be likely to result in the patient's death, a health care facility or
25 health care professional that does not wish to provide that treatment
26 shall comply with the surrogate's decision pending: transfer of the
27 patient to a health care facility or health care professional willing to
28 receive the patient; or a review of the matter by a court of
29 competent jurisdiction.

30 o. Within a reasonable period of time after an adult patient's
31 admission to a health care facility, the facility shall make
32 reasonable efforts to determine if there is a patient's representative
33 designated for that individual, or if at least one person is available
34 to serve as a surrogate in the event that the patient is determined to
35 lack decision-making capacity. If the health care facility is unable
36 to identify a patient's representative or potential surrogate for a
37 patient who is determined to lack decision-making capacity, it shall
38 seek to identify, to the extent reasonably possible, the patient's
39 wishes and preferences, including, but not limited to, the patient's
40 religious or moral beliefs or values, in regard to pending health care
41 decisions concerning that patient, and shall record its findings in
42 the patient's medical record.

43
44 3. The procedures specified in this section shall apply to health
45 care decisions for an adult patient who would qualify for surrogate
46 decision-making under this act but for whom no surrogate is
47 identified as reasonably available, willing, or competent to act. A
48 health care decision made pursuant to this section shall be made in

1 accordance with the standards set forth in section 2 of this act and
2 shall not be based on the financial interests of the health care
3 facility or any other health care provider. The specific procedures
4 to be followed shall depend on whether the decision involves
5 routine medical treatment, major medical treatment, or the
6 withholding or withdrawal of life-sustaining treatment, and the
7 location where the treatment is provided.

8 a. (1) An attending physician shall be authorized to decide
9 about the provision of routine medical treatment for an adult patient
10 who has been determined to lack decision-making capacity pursuant
11 to this act. Nothing in this subsection shall require a health care
12 facility or a health care professional to obtain specific consent for
13 treatment when specific consent is not otherwise required by law.

14 (2) A decision to provide major medical treatment, made in
15 accordance with the following requirements, shall be authorized for
16 an adult patient who has been determined to lack decision-making
17 capacity pursuant to this act.

18 (a) An attending physician shall make a recommendation in
19 consultation with health care facility staff directly responsible for
20 the patient's care.

21 (b) In a general hospital, at least one other physician designated
22 by the hospital shall independently make a concurring
23 determination that the recommendation is appropriate.

24 (c) In a health care facility other than a general hospital, the
25 medical director of the facility, or a physician designated by the
26 medical director, shall independently make a concurring
27 determination that the recommendation is appropriate; except that if
28 the medical director is the patient's attending physician, a different
29 physician designated by the facility shall make the independent
30 determination. A health or social service practitioner employed by
31 or otherwise formally affiliated with the facility may provide a
32 second opinion for decisions about physical restraints made
33 pursuant to this subsection.

34 b. (1) A court of competent jurisdiction may make a decision to
35 withhold or withdraw life-sustaining treatment for an adult patient
36 who has been determined to lack decision-making capacity pursuant
37 to this act if the court finds that the decision accords with standards
38 for decisions for adult patients set forth in subsections j. and k. of
39 section 2 of this act.

40 (2) Life-sustaining treatment may be withdrawn or withheld
41 from an adult patient who has been determined to lack decision-
42 making capacity pursuant to this act, without judicial approval, if
43 the patient's attending physician determines to a reasonable degree
44 of medical certainty, and at least one other physician independently
45 makes a concurring determination, that the provision of such
46 treatment:

47 (a) offers the patient no medical benefit because the patient will
48 die imminently, even if the treatment is provided; and

1 (b) would violate accepted medical standards.

2 (3) The provisions of this subsection shall not apply to any
3 treatment necessary to alleviate the patient's pain or discomfort.

4 c. If a physician who is consulted for a concurring determination
5 objects to the attending physician's recommendation or
6 determination made pursuant to this section, or a member of the
7 health care facility staff directly responsible for the patient's care
8 objects to the attending physician's recommendation about major
9 medical treatment or treatment without medical benefit, the matter
10 shall be referred to the institutional ethics committee if it cannot be
11 otherwise resolved.

12 d. A physician's written order not to attempt cardiopulmonary
13 resuscitation in the event the patient suffers a cardiac or respiratory
14 arrest shall be written in the patient's medical record. Consent to
15 such an order not to resuscitate shall not constitute consent to
16 withhold or withdraw treatment other than resuscitative measures.

17 e. (1) A patient may at any time revoke his consent to withhold
18 or withdraw life-sustaining treatment by informing the attending
19 physician or a member of the medical or nursing staff of the health
20 care facility of the revocation.

21 (2) A member of the medical or nursing staff who is informed of
22 such a revocation shall immediately notify the attending physician
23 of the revocation; and the attending physician, when informed
24 thereof, shall immediately:

25 (a) record the revocation in the patient's medical record;

26 (b) cancel any orders to withhold or withdraw treatment; and

27 (c) notify the health care facility staff directly responsible for
28 the patient's care of the revocation and any such cancellation.

29 f. If a decision to withhold or withdraw life-sustaining treatment
30 has been made pursuant to this section, and an attending physician
31 determines at any time that the decision is no longer appropriate or
32 authorized because the patient has regained decision-making
33 capacity or because the patient's condition has otherwise improved,
34 the physician shall immediately:

35 (1) include such determination in the patient's medical record;

36 (2) cancel any order or plan of care to withhold or withdraw
37 life-sustaining treatment;

38 (3) notify the person who made the decision to withhold or
39 withdraw treatment; and

40 (4) notify the health care facility staff directly responsible for
41 the patient's care of any cancelled order or plan of care.

42 g. (1) If a patient with an order to withhold or withdraw life-
43 sustaining treatment is transferred from one health care facility to
44 another, any such order shall remain in effect until an attending
45 physician examines the transferred patient, whereupon the attending
46 physician shall:

1 (a) issue an appropriate order to continue the prior order, which
2 may be done without obtaining another consent to withhold or
3 withdraw life-sustaining treatment pursuant to this section; or

4 (b) cancel the prior order, if the attending physician determines
5 that the order is no longer appropriate or authorized.

6 (2) Before canceling an order to withhold or withdraw life-
7 sustaining treatment pursuant to paragraph (1) of this subsection,
8 the attending physician shall make reasonable efforts to notify the
9 person who made the decision to withhold or withdraw treatment
10 and the staff directly responsible for the patient's care of the
11 cancellation. If such notice cannot reasonably be provided prior to
12 canceling the order or plan, the attending physician shall provide
13 such notice as soon as is reasonably practicable after cancellation.
14

15 4. Nothing in this act shall be construed to:

16 a. alter the rights or responsibilities of a health care
17 professional as provided in section 10 of P.L.1991, c.201 (C.26:2H-
18 62) or a private, religiously-affiliated health care facility as
19 provided in section 13 of P.L.1991, c.201 (C.26:2H-65);

20 b. make a person liable for the cost of health care provided to
21 an adult patient pursuant to this act who would not be so liable if
22 the health care were provided pursuant to the patient's decision;

23 c. make a person liable for the cost of health care for a minor
24 solely by virtue of making a decision as a guardian of a minor
25 pursuant to this act;

26 d. create, expand, diminish, impair, or supersede any authority
27 that a person may have under law to make or express decisions,
28 wishes, or instructions regarding health care on his behalf,
29 including decisions about life-sustaining treatment;

30 e. permit or promote suicide, assisted suicide, or euthanasia;

31 f. diminish the duty of a parent or legal guardian under existing
32 law to consent to treatment for a minor; or

33 g. limit the authority of a court of competent jurisdiction to
34 appoint a special guardian for a patient or take any other action as
35 set forth by court rule or otherwise authorized by law with respect
36 to providing for the making of health care decisions for a patient
37 who is determined to lack decision-making capacity.
38

39 5. a. A surrogate shall not be subject to criminal or civil liability
40 for any actions performed in good faith and in accordance with the
41 provisions of this act.

42 b. A health care professional shall not be subject to criminal or
43 civil liability or to discipline by a health care facility or a State
44 professional and occupational licensing board for professional
45 misconduct for any actions performed in good faith and in
46 accordance with the provisions of this act, any rules and regulations
47 established by the department pursuant to this act, and accepted
48 professional standards for that health care professional.

1 c. A health care facility or institutional ethics committee shall
2 not be subject to criminal or civil liability for any actions performed
3 in good faith and in accordance with the provisions of this act.

4

5 6. The commissioner:

6 a. shall prepare a notice summarizing the rights, duties, and
7 requirements of this act and shall require that a copy of that notice
8 be furnished to a patient or to a person on the surrogate list known
9 to a health care facility to which the patient is admitted, or to the
10 parent or guardian of a minor patient, upon, or prior to, the patient's
11 admission, or within a reasonable time thereafter, and to each
12 member of the staff directly involved with patient care;

13 b. may take such actions to ensure compliance with the
14 provisions of this act by a health care facility as the commissioner
15 deems necessary and within his statutory authority to effectuate the
16 purposes thereof; and

17 c. pursuant to the "Administrative Procedure Act," P.L.1968,
18 c.410 (C.52:14B-1 et seq.), shall adopt such rules and regulations as
19 are necessary to effectuate the purposes of this act, including, but
20 not limited to, requirements for the adoption by health care facilities
21 of written policies, in accordance with accepted medical standards,
22 governing the implementation and regular review of decisions to
23 withhold or withdrew life-sustaining treatment and the
24 documentation of clinical determinations and decisions by
25 surrogates and health care professionals pursuant to this act.

26

27 7. a. As used in this section:

28 "Administrator" means the administrator of the program for a
29 participating hospital designated pursuant to this section.

30 "Commissioner" means the Commissioner of Health and Senior
31 Services.

32 "Developmental center" means a State developmental center
33 listed in R.S.30:1-7.

34 "Eligible patient" means an adult inpatient at a participating
35 hospital who, according to the patient's attending physician:

36 (1) is ready to be discharged as an inpatient, but needs to be
37 transitioned to post-acute care;

38 (2) lacks capacity to consent to the discharge and to admission
39 to post-acute care;

40 (3) does not have a guardian, health care representative,
41 surrogate, family member, friend, or other representative who is
42 reasonably available and willing to make a transition decision on
43 the patient's behalf, whose consent would be accepted by a
44 proposed post-acute care provider, and who is legally authorized to
45 make all required transition-related financial arrangements;

46 (4) has a discharge plan that identifies an appropriate post-acute
47 care provider that is or may be willing to admit the patient if a
48 transition authorization panel, established pursuant to this section,

1 were to authorize the transition and, if necessary, make transition-
2 related financial arrangements; and

3 (5) has not expressed an objection to any of the foregoing
4 findings or to being transitioned to the proposed post-acute facility
5 or service or, if applicable, the proposed transition-related financial
6 arrangements.

7 “Financial institution” means a State or federally chartered bank,
8 savings bank, savings and loan association, or any other financial
9 services company or provider, including, but not limited to, a
10 broker-dealer, investment company, money market or mutual fund,
11 credit union, or insurer.

12 “Health care representative” means a health care representative
13 designated pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.).

14 “Medicaid” means the Medicaid program established pursuant to
15 P.L.1968, c.413 (C.30:4D-1 et seq.).

16 “Participating hospital” means a hospital that is selected by the
17 commissioner to participate in the program, upon the chief
18 executive officer of the hospital notifying the commissioner in
19 writing that the hospital elects to participate in the program, and
20 until such time as the chief executive officer of the hospital notifies
21 the commissioner in writing that the hospital elects to cease its
22 participation in the program.

23 “Post-acute care” means care provided by a nursing home,
24 assisted living residence or comprehensive personal care home,
25 residential health care facility, hospice, special hospital, psychiatric
26 facility, developmental center, inpatient or residential substance
27 abuse treatment program, or home health care agency.

28 “Program” means the transition authorization panel
29 demonstration program established pursuant to this section.

30 “Psychiatric facility” means a psychiatric facility as defined in
31 section 2 of P.L.1987, c.116 (C.30:4-27.2).

32 “Surrogate” means a surrogate designated pursuant to section 2
33 of this act.

34 “Transition authorization” means a decision, made by a
35 transition authorization panel pursuant to this section, to authorize
36 the transition of an eligible patient from a participating hospital to a
37 specific post-acute care provider.

38 “Transition authorization panel” or “panel” means a three-person
39 panel, convened pursuant to this section, to authorize the transition
40 of an eligible patient from a participating hospital to a specific post-
41 acute care provider, and to make transition-related financial
42 arrangements.

43 “Transition authorization panel agent” or “agent” means a person
44 authorized by a transition authorization panel to carry out
45 transition-related financial arrangements.

46 “Transition authorization panel pool” means the full pool of
47 persons qualified and designated to serve on transition authorization
48 panels at a program site.

1 “Transition-related financial arrangements” means those acts that
2 are necessary to:

3 (1) expend the eligible patient's funds for post-acute care for a
4 period of up to 120 days or until the court appointment of a
5 guardian of the property, whichever occurs first;

6 (2) apply for the eligible patient's enrollment in Medicaid or the
7 federal Medicare program established pursuant to Title XVIII of the
8 "Social Security Act," Pub.L.89-97 (42 U.S.C. s.1395 et seq.); and

9 (3) access financial information about the eligible patient from
10 financial institutions to the extent necessary for the purposes of
11 this section.

12 b. There is established a transition authorization panel
13 demonstration program, to be conducted at six program sites, two
14 each in the northern, central, and southern regions of the State, for
15 the purpose of evaluating an approach to making decisions relating
16 to the transition of eligible patients from inpatient care to post-acute
17 care.

18 c. Each participating hospital shall:

19 (1) designate a person as administrator of the program for that
20 program site;

21 (2) carry out, and bear the costs of, the administrative
22 responsibilities of the program as set forth in this section, for that
23 program site; and

24 (3) create and maintain records of all requests made, panels
25 convened, transition-related financial arrangements made, and other
26 actions taken pursuant to this section, which records shall be made
27 available to the Department of Health and Senior Services upon
28 request.

29 d. (1) A participating hospital shall create a transition
30 authorization panel pool at a program site, which shall have three
31 classes of members, as follows:

32 (a) one class to comprise persons designated by the hospital;

33 (b) one class to comprise persons designated by the director of
34 the county social services agency of the county in which the
35 hospital is located; and

36 (c) one class to comprise persons designated by the Ombudsman
37 for the Institutionalized Elderly.

38 (2) Each person designated as a member of a transition
39 authorization panel pool shall be an adult with recognized expertise
40 or demonstrated interest in the care and treatment of hospital and
41 post-acute care patients, and who can be expected to apply the
42 standards of this section in good faith and in the best interests of the
43 eligible patient.

44 (3) The participating hospital and the director of the applicable
45 county social services agency shall jointly appoint one member as
46 chair of the transition authorization panel pool.

47 e. (1) The review of each request made for transition
48 authorization and for transition-related financial arrangements made

1 pursuant to this section shall be undertaken by a panel of three
2 members drawn from the transition authorization panel pool, one
3 from each class as set forth in paragraph (1) of subsection d. of this
4 section. The participating hospital shall appoint one member as
5 panel chair.

6 (2) No person who is a health care professional actively involved
7 in the treatment of the patient whose case is under consideration by
8 a panel may serve on the panel considering that patient's case,
9 although other hospital personnel may serve on the panel if
10 otherwise qualified to do so.

11 f. An eligible patient's attending physician may request that a
12 panel be convened by submitting a written request to the
13 administrator of the participating hospital that:

14 (1) indicates that it is a request for the panel to authorize the
15 patient's transition to post-acute care and, if applicable, make
16 transition-related financial arrangements;

17 (2) sets forth the reasons for believing that the patient is an
18 eligible patient; and

19 (3) identifies the proposed post-acute care provider or providers
20 to whom an application would be made for that patient.

21 g. Upon receipt of the request from an eligible patient's
22 attending physician, the administrator shall:

23 (1) decline the request and notify the attending physician of the
24 reason therefor, which may include, but not be limited to, the fact
25 that although the patient is eligible, a transition can be
26 accomplished without the need to convene a panel, or

27 (2) take the actions set forth in subsection h. of this section to
28 convene a panel.

29 h. The administrator shall take the following actions in order to
30 convene a panel pursuant to the request of an eligible patient's
31 attending physician:

32 (1) set a date, time, and place for the panel to review the request,
33 which review may be scheduled for any date and time at least three
34 days after the administrator's receipt of the request and send notice
35 as provided in paragraph (2) of this subsection; however, the review
36 shall be held earlier or later than the date set forth in the notice if all
37 persons who are entitled to notice, as set forth in this paragraph,
38 agree, in writing or verbally, as documented by the administrator, to
39 the date, time, and place of the review; and

40 (2) send a copy of the request and notice, by hand, mail, fax or
41 e-mail, and notice of the provisions of paragraph (3) of subsection j.
42 of this section, to the following persons:

43 (a) three members of the transition authorization panel pool, one
44 from each class, selected by the pool chair, who are willing and able
45 to serve as a panel for the purpose of this review;

46 (b) the patient, if there is any indication of the patient's ability to
47 comprehend the request and notice;

- 1 (c) a guardian, health care representative, surrogate, family
2 member, friend, or other representative of the patient who may be
3 reasonably available and willing to make a transition decision on
4 the patient's behalf, if there is any such person;
- 5 (d) if the patient was admitted to the hospital from a psychiatric
6 facility or developmental center, the chief administrative officer of
7 the psychiatric facility or developmental center; and
- 8 (e) the patient's attending physician.
- 9 i. Prior to or during the review by the panel, the panel chair may
10 request and, notwithstanding any other law to the contrary, shall be
11 entitled to receive from any health care provider and disclose to the
12 panel any information that is relevant to the review. The panel shall
13 maintain the confidentiality of any such information and comply
14 with any limitations on the further release of that information, as
15 required by any applicable provisions of State or federal law.
- 16 j. The panel shall comply with the provisions of this subsection
17 in the conduct of its review:
- 18 (1) The panel shall meet in person or by video conference to
19 conduct its review.
- 20 (2) The panel chair may request the attendance at the review of
21 any person who might assist the panel in its review.
- 22 (3) (a) Any of the persons described in subparagraphs (b)
23 through (e) of paragraph (2) of subsection h. of this section, as
24 applicable, shall be afforded an opportunity to address the panel and
25 may be present for such other parts of the panel review as the chair
26 may permit.
- 27 (b) The patient may be present when any other person addresses
28 the panel.
- 29 (c) No person described in subparagraphs (b) through (e) of
30 paragraph (2) of subsection h. of this section shall be permitted to
31 be present during the deliberations of the panel.
- 32 (4) Where practicable, the panel members shall personally
33 interview and observe the patient prior to making their decision.
- 34 (5) The panel chair may adjourn and reconvene the panel as
35 necessary.
- 36 (6) The administrator shall arrange for minutes to be taken and
37 maintained of any panel meeting, but no recording or transcription
38 shall be required.
- 39 (7) In its review, the panel shall consider whether the proposed
40 transition is to a facility or program that appears able to meet the
41 patient's needs in the least restrictive setting reasonably available to
42 the patient.
- 43 k. Upon concluding its review, the panel, by majority vote, shall
44 make a written determination, which shall be signed by the chair on
45 behalf of the panel and made part of the patient's medical record, as
46 to:
- 47 (1) whether the patient is an eligible patient;

1 (2) whether to authorize the proposed transition; except that, if
2 the patient has a guardian, health care representative, surrogate,
3 family member, friend, or other representative who is reasonably
4 available and willing to make a transition decision on the patient's
5 behalf, but who is not legally authorized to make transition-related
6 financial arrangements, then that person, rather than the panel, shall
7 decide whether to authorize the proposed transition; and

8 (3) whether to authorize transition-related financial
9 arrangements.

10 l. (1) If the panel determines to authorize the proposed
11 transition, the authorization shall be set forth in an order, signed by
12 the chair on behalf of the panel and made part of the patient's
13 medical record, which shall describe the scope of such authorization
14 and, if it authorizes transition-related financial arrangements,
15 designate a transition authorization panel agent.

16 (2) Notwithstanding any law to the contrary, the administrator
17 and the agent shall disclose the order to such persons as necessary
18 for the purpose of carrying out its terms.

19 (3) The order authorizing the proposed transition shall constitute,
20 and may be relied upon by the participating hospital, post-acute
21 care providers, financial institutions, and other third parties as, legal
22 authority for them to perform or cooperate in the performance of
23 those actions authorized pursuant to this section, including legal
24 authority for:

25 (a) the participating hospital to discharge the patient;

26 (b) the post-acute care provider to admit the patient;

27 (c) the transition authorization panel agent to make transition-
28 related financial arrangements; and

29 (d) Medicaid, financial institutions, and other parties to provide
30 financial and other personal information about the patient related to
31 the transition and transition-related financial arrangements to the
32 administrator or agent, and to otherwise cooperate in the transition-
33 related financial arrangements.

34 m. A transition authorization panel agent, in the performance of
35 his duties under this section, shall be deemed the personal
36 representative of the patient for the purposes of the federal
37 Standards for Privacy of Individually Identifiable Health
38 Information, 45 C.F.R. Parts 160 and 164.

39 n. No person or entity shall be subject to civil or criminal
40 liability or sanction by a governmental agency for actions taken
41 reasonably and in good faith pursuant to this section:

42 (a) as a member or agent of a transition authorization panel, or
43 as administrator of a transition authorization program;

44 (b) for the purpose of discharging, transferring, or admitting a
45 patient from or to a facility or program pursuant to an order of a
46 transition authorization panel; or

47 (c) for the purpose of disclosing financial or other personal
48 information about a patient or disbursing patient funds, or otherwise

1 cooperating in transition-related financial arrangements, pursuant to
2 an order of a transition authorization panel.

3 o. (1) Each administrator shall submit an annual report to the
4 commissioner, on a form and in a manner to be prescribed by the
5 commissioner, no later than 30 days prior to each anniversary of the
6 effective date of this act, which shall include with respect to each
7 request for a review by a panel at that hospital: the type of post-
8 acute care requested; the length of time from the date of the request
9 until the panel convened, the panel issued its determination, and the
10 patient was discharged from the participating hospital if the
11 determination approved the transition, respectively; the categories
12 of persons who addressed the panel; the number of unanimous and
13 non-unanimous panel votes; whether the order called for transition-
14 related financial arrangements and, if so, whether those
15 arrangements were successfully made; whether the patient or
16 another person objected to the panel's decision; and any data or
17 other information available to the administrator regarding the
18 impact of the demonstration on the average inpatient length of stay
19 at that hospital;

20 (2) No later than 30 days prior to the third anniversary of the
21 effective date of this act, the commissioner shall present a report to
22 the Governor, and to the Legislature pursuant to section 2 of
23 P.L.1991, c.164 (C.52:14-19.1), on the results of the program,
24 which shall include, at a minimum:

25 (a) an evaluation by each participating hospital and its
26 applicable county social services agency, and by the Ombudsman
27 for the Institutionalized Elderly, regarding whether transition
28 authorization panels adequately protected the interests and rights of
29 patients, including their interest in being transitioned to the least
30 restrictive setting reasonably available, and the success of the
31 transition plans approved by the program in meeting the needs of
32 patients; and

33 (b) any recommendations that the commissioner desires to make
34 for legislative action or to extend the program or adopt a permanent
35 Statewide transition authorization program.

36
37 8. This act shall take effect on the first day of the seventh month
38 next following the date of enactment, but the Commissioner of
39 Health and Senior Services may take such anticipatory
40 administrative action in advance thereof as shall be necessary for
41 the implementation of this act. Section 7 of this act shall expire
42 three years after the effective date.

43

44

45

STATEMENT

46

47 The purpose of this bill is to facilitate the making of health care
48 decisions for patients in a general hospital, nursing home, or

1 assisted living facility (health care facility) who have lost decision-
2 making capacity.

3 The bill provides specifically as follows:

- 4 • A health care facility is to establish policies and procedures, in
5 accordance with the provisions of this bill, to provide for the
6 making of health care decisions by a surrogate, who is to be
7 designated by the health care facility, for an adult patient who is
8 determined, pursuant to this bill, to: lack decision-making
9 capacity; not have a patient's representative; and not have
10 executed an advance directive.
- 11 • The patient's attending physician is to make an initial
12 determination that the patient lacks decision-making capacity to a
13 reasonable degree of medical certainty, including, but not limited
14 to, an assessment of the cause and extent of the patient's
15 incapacity and the likelihood that the patient will regain decision-
16 making capacity. An initial determination that a patient lacks
17 decision-making capacity is subject to a concurring
18 determination that the patient lacks decision-making capacity to
19 a reasonable degree of medical certainty, independently made by
20 a health or social service practitioner, if the health care decision
21 concerns the withdrawal or withholding of life-sustaining
22 treatment. The concurring determination is to: include, but not
23 be limited to, an assessment of the cause and extent of the
24 patient's incapacity and the likelihood that the patient will regain
25 decision-making capacity; and be included in the patient's
26 medical record.
- 27 • If the patient's attending physician has determined that the patient
28 lacks decision-making capacity but the person making a
29 concurring determination disagrees with the attending physician's
30 determination, they are to seek to resolve the disagreement by
31 means of procedures and practices established by the health care
32 facility, including, but not limited to, consultation with an
33 institutional ethics committee, or with a person designated by the
34 health care facility for this purpose.
- 35 • A health care facility is authorized to designate a surrogate to
36 make health care decisions for an adult patient who has been
37 determined to lack decision-making capacity, and is to provide
38 prompt notice of that determination and designation to: the
39 patient, if the health care facility has any indication of the
40 patient's ability to comprehend the information; and at least one
41 person on the surrogate list, set in this bill, who is highest in order
42 of priority listed when persons in prior classes are not reasonably
43 available.
- 44 • A determination made pursuant to the bill that an adult patient
45 lacks decision-making capacity is not to be construed as a finding
46 that the patient lacks capacity for any other purpose.
- 47 • Notwithstanding a determination that an adult patient lacks
48 decision-making capacity, if the patient objects to the

- 1 determination of incapacity, or to the choice of a surrogate or to a
2 health care decision made for that patient pursuant to the bill, the
3 patient's objection is to prevail, unless overruled by a court of
4 competent jurisdiction or if another legal basis exists for
5 overriding the patient's decision.
- 6 • An adult patient's attending physician is to confirm the patient's
7 continued lack of decision-making capacity before complying
8 with health care decisions made pursuant to the bill.
 - 9 • A health care facility is to designate one person from the
10 following list, as applicable, from the class highest in priority
11 when persons in prior classes are not reasonably available,
12 willing, and competent to act, to serve as surrogate for an adult
13 patient who is determined to lack decision-making capacity
14 pursuant to the bill; except that the designated person may
15 designate any other person on the list to be surrogate, provided no
16 one in a class higher in priority than the person so designated
17 objects:
 - 18 (1) the patient's spouse, partner in a civil union couple, or
19 domestic partner, if not legally separated from the patient;
 - 20 (2) the patient's son or daughter 18 years of age or older;
 - 21 (3) the patient's parent;
 - 22 (4) the patient's brother or sister 18 years of age or older;
 - 23 (5) a close friend of the patient.
 - 24 • An operator, administrator, or employee of a health care facility
25 to which a patient has been admitted or from which a patient was
26 transferred, or a physician who has privileges at such a health
27 care facility or a health care professional or other person under
28 contract with such a health care facility may not serve as the
29 surrogate for an adult who is a patient at that facility, unless that
30 person is related to the patient by blood, marriage, civil union,
31 domestic partnership, or adoption, or is a close friend of the
32 patient whose friendship with the patient preceded the patient's
33 admission to the facility. If a physician serves as surrogate, the
34 physician is not to act as the patient's attending physician after his
35 authority as surrogate begins.
 - 36 • A surrogate who is designated pursuant to the bill will, subject to
37 the provisions thereof, have the authority to make any health care
38 decision on the adult patient's behalf that the patient could make.
 - 39 • A health care facility or a health care professional is not obligated
40 to seek the consent of a surrogate if an adult patient has already
41 made a decision about the proposed health care, expressed orally
42 or in writing or, with respect to a decision to withdraw or
43 withhold life-sustaining treatment, expressed either orally during
44 the patient's stay in the health care facility in the presence of two
45 witnesses 18 years of age or older, at least one of whom is a
46 health or social service practitioner affiliated with the health care
47 facility, or in writing.

- 1 • In the event that an attending physician determines that the
2 patient has regained decision-making capacity, the authority of
3 the surrogate will cease.
- 4 • Notwithstanding any law to the contrary, the surrogate will have
5 the right to receive medical information and medical records
6 necessary to make informed decisions about the patient's health
7 care.
- 8 • The surrogate is to make health care decisions for the patient: in
9 accordance with the patient's wishes or values, including, but not
10 limited to, the patient's religious or moral beliefs; or if the
11 patient's wishes or values are not reasonably known and cannot
12 with reasonable diligence be ascertained, in accordance with the
13 patient's best interests.
- 14 • A decision by the surrogate to withhold or withdraw life-
15 sustaining treatment from the patient is to be authorized only if
16 the attending physician determines, with the independent
17 concurrence of another physician and to a reasonable degree of
18 medical certainty and in accordance with accepted medical
19 standards, that:
- 20 -- the patient has an illness or injury which can be expected to
21 cause death within six months, whether or not treatment is
22 provided, or that the patient is permanently unconscious, and the
23 provision or continuation of treatment would be an extraordinary
24 burden to the patient; or
- 25 -- the patient has an irreversible or incurable condition, and the
26 provision or continuation of treatment would involve such pain or
27 suffering for, or otherwise be so extraordinarily burdensome to, the
28 patient that it would reasonably be deemed inhumane under the
29 circumstances.
- 30 • If the attending physician of a patient in a general hospital objects
31 to a surrogate's decision to withhold or withdraw nutrition and
32 hydration provided by means of medical treatment from the
33 patient, the decision is not to be implemented until the
34 institutional ethics committee, including at least one physician
35 who is not directly responsible for the patient's care, or a court of
36 competent jurisdiction, reviews the decision and determines that
37 it meets the standards set forth in the bill. This provision would
38 not apply to nutrition and hydration provided to a patient orally
39 and without reliance on medical treatment.
- 40 • The parent or guardian of a minor patient has the authority to
41 make decisions about life-sustaining treatment, including
42 decisions to withhold or withdraw such treatment, subject to the
43 provisions of the bill. The parent or guardian of a minor patient
44 is to make decisions in accordance with the minor's best interests,
45 taking into account the minor's wishes as appropriate under the
46 circumstances. An attending physician, in consultation with a
47 minor's parent or guardian, is to determine whether a minor
48 patient has decision-making capacity for a decision to withhold or

- 1 withdraw life-sustaining treatment; and, if the minor has such
2 capacity, a parent's or guardian's decision to withhold or
3 withdraw life-sustaining treatment for the minor may not be
4 implemented without the minor's consent.
- 5 • An attending physician, upon being informed of a decision to
6 withdraw or withhold life-sustaining treatment, made pursuant to
7 the bill, is to record the decision in the patient's medical record,
8 review the medical basis for the decision, and either: implement
9 the decision, or promptly make his objection to the decision and
10 the reasons for the objection known to the decision-maker, and
11 either make all reasonable efforts to arrange for the transfer of the
12 patient to another physician, if necessary, or promptly refer the
13 matter to the institutional ethics committee.
 - 14 • Notwithstanding the provisions of the bill to the contrary, if a
15 surrogate directs the provision of life-sustaining treatment for a
16 patient, the denial of which in reasonable medical judgment
17 would be likely to result in the patient's death, a health care
18 facility or health care professional not wishing to provide that
19 treatment is to comply with the surrogate's decision pending:
20 transfer of the patient to a health care facility or health care
21 professional willing to receive the patient; or a review of the
22 matter by a court of competent jurisdiction.
 - 23 • Within a reasonable period of time after an adult patient's
24 admission to a health care facility, the facility is to make
25 reasonable efforts to determine if there is a patient's
26 representative designated for that individual, or if at least one
27 person is available to serve as a surrogate in the event that the
28 patient is determined to lack decision-making capacity. If the
29 health care facility is unable to identify a patient's representative
30 or potential surrogate for a patient who is determined to lack
31 decision-making capacity, it is to seek to identify and act upon, to
32 the extent reasonably possible, the patient's wishes and
33 preferences, including, but not limited to, the patient's religious or
34 moral beliefs or values, in regard to pending health care decisions
35 concerning that patient. The specific procedures to be followed
36 will depend on whether the decision involves routine medical
37 treatment, major medical treatment, or the withholding or
38 withdrawal of life-sustaining treatment, and the location where
39 the treatment is provided.
 - 40 • A court of competent jurisdiction may make a decision to
41 withhold or withdraw life-sustaining treatment for an adult
42 patient who has been determined to lack decision-making
43 capacity, pursuant to the bill, if the court finds that the decision
44 accords with standards for decisions for adult patients set forth in
45 the bill.
 - 46 • Life-sustaining treatment may be withdrawn or withheld from an
47 adult patient who has been determined to lack decision-making
48 capacity pursuant to the bill, without judicial approval, if the

- 1 patient's attending physician determines to a reasonable degree of
2 medical certainty, and at least one other physician independently
3 makes a concurring determination, that the provision of such
4 treatment: offers the patient no medical benefit because the
5 patient will die imminently, even if the treatment is provided; and
6 would violate accepted medical standards. These provisions will
7 not apply to any treatment necessary to alleviate the patient's pain
8 or discomfort.
- 9 • A patient, surrogate, or parent or guardian of a minor patient may
10 at any time revoke his consent to withhold or withdraw life-
11 sustaining treatment by informing the attending physician or a
12 member of the medical or nursing staff of the health care facility
13 of the revocation.
 - 14 • Nothing in the bill is to be construed to:
 - 15 -- alter the rights or responsibilities of a health care professional
16 or a private, religiously-affiliated health care facility as provided in
17 the "New Jersey Advance Directives for Health Care Act";
 - 18 -- make a person liable for the cost of health care provided to an
19 adult patient, pursuant to the bill, who would not be so liable if the
20 health care were provided pursuant to the patient's decision;
 - 21 -- make a person liable for the cost of health care for a minor
22 solely by virtue of making a decision as a guardian of a minor
23 pursuant to the bill;
 - 24 -- create, expand, diminish, impair, or supersede any authority
25 that a person may have under law to make or express decisions,
26 wishes, or instructions regarding health care on his behalf,
27 including decisions about life-sustaining treatment;
 - 28 -- permit or promote suicide, assisted suicide, or euthanasia;
 - 29 -- diminish the duty of a parent or legal guardian under existing
30 law to consent to treatment for a minor; or
 - 31 -- limit the authority of a court of competent jurisdiction to
32 appoint a special guardian for a patient or take any other action as
33 set forth by court rule or otherwise authorized by law with respect
34 to providing for the making of health care decisions for a patient
35 who is determined to lack decision-making capacity.
 - 36 • A surrogate, health care professional, health care facility, or
37 institutional ethics committee will not be subject to criminal or
38 civil liability for any actions performed in good faith and in
39 accordance with the provisions of the bill; nor will a health care
40 professional be subject to criminal or civil liability or to
41 discipline by a health care facility or the respective State
42 licensing board for professional misconduct for any actions
43 performed in good faith and in accordance with the provisions of
44 the bill, any rules and regulations adopted pursuant thereto, and
45 accepted professional standards for that health care professional.
 - 46 • The bill also establishes a three-year transition authorization
47 panel demonstration program, to be conducted at six program
48 sites, two each in the northern, central, and southern regions of

1 the State, for the purpose of evaluating an approach to making
2 decisions relating to the transition of eligible patients from
3 inpatient care to post-acute care.

4 -- For the purposes of the demonstration program, the bill defines
5 "eligible patient" to mean an adult inpatient at a participating
6 hospital who, according to the patient's attending physician:

7 (1) is ready to be discharged as an inpatient, but needs to be
8 transitioned to post-acute care;

9 (2) lacks capacity to consent to the discharge and to admission to
10 post-acute care;

11 (3) does not have a representative who is reasonably available
12 and willing to make a transition decision on the patient's behalf,
13 whose consent would be accepted by a proposed post-acute care
14 provider, and who is legally authorized to make all required
15 transition-related financial arrangements;

16 (4) has a discharge plan that identifies an appropriate post-acute
17 care provider that is or may be willing to admit the patient if a
18 transition authorization panel, established under the program, were
19 to authorize the transition and, if necessary, make transition-related
20 financial arrangements; and

21 (5) has not expressed an objection to any of the foregoing
22 findings or to being transitioned to the proposed post-acute facility
23 or service or, if applicable, the proposed transition-related financial
24 arrangements.

25 -- A participating hospital is to create a transition authorization
26 panel pool at a program site, which will have three classes of
27 members, one each to comprise persons designated by the hospital,
28 the director of the applicable county social services agency, and the
29 Ombudsman for the Institutionalized Elderly, respectively, and each
30 member of which is to be an adult with recognized expertise or
31 demonstrated interest in the care and treatment of hospital and post-
32 acute care patients, and who can be expected to apply the standards
33 of the program in good faith and in the best interests of the eligible
34 patient.

35 -- The review of each request made for transition authorization
36 and for transition-related financial arrangements made under the
37 program is to be undertaken by a panel of three members drawn
38 from the transition authorization panel pool, one from each class as
39 set forth above.

40 -- An eligible patient's attending physician may request that a
41 panel be convened by submitting a written request to the
42 administrator of the participating hospital, for the panel to authorize
43 an eligible patient's transition to post-acute care and, if applicable,
44 make transition-related financial arrangements.

45 -- Upon receipt of the request from an eligible patient's attending
46 physician, the administrator is required to: decline the request and
47 notify the attending physician of the reason therefor; or take the
48 actions set forth in the bill to convene a panel.

1 -- The panel is to meet in person or by video conference to
2 conduct its review and may request the attendance at the review of
3 any person who might assist the panel in its review.

4 -- Any of the persons provided notice of the convening of the
5 panel, pursuant to the bill, are to be afforded an opportunity to
6 address the panel and may be present for such other parts of the
7 panel review as the chair may permit; and the patient may be
8 present when any other person addresses the panel. These
9 individuals are not permitted to be present during the deliberations
10 of the panel.

11 -- Where practicable, the panel members are to personally
12 interview and observe the patient prior to making their decision.

13 -- In its review, the panel is to consider whether the proposed
14 transition is to a facility or program that appears able to meet the
15 patient's needs in the least restrictive setting reasonably available to
16 the patient.

17 -- Upon concluding its review, the panel, by majority vote, is to
18 make a written determination, signed by the chair on behalf of the
19 panel and made part of the patient's medical record, as to:

20 (1) whether the patient is an eligible patient;

21 (2) whether to authorize the proposed transition; except that, if
22 the patient has a representative who is reasonably available and
23 willing to make a transition decision on the patient's behalf, but
24 who is not legally authorized to make transition-related financial
25 arrangements, then that person, rather than the panel, will decide
26 whether to authorize the proposed transition; and

27 (3) whether to authorize transition-related financial
28 arrangements.

29 -- If the panel determines to authorize the proposed transition,
30 the authorization is to be set forth in an order, signed by the chair
31 on behalf of the panel and made part of the patient's medical record,
32 which may be relied upon by the participating hospital, post-acute
33 care providers, financial institutions, and other third parties as legal
34 authority for them to perform or cooperate in the performance of
35 those actions authorized by the bill.

36 -- No person or entity will be subject to civil or criminal liability
37 or sanction by a governmental agency for actions taken reasonably
38 and in good faith, pursuant to the provisions of the bill, governing
39 the demonstration program.

40 -- The Commissioner of Health and Senior Services, no later
41 than 30 days prior to the third anniversary of the effective date of
42 the bill, will present a report to the Governor and the Legislature on
43 the results of the demonstration program.

44 • The bill takes effect on the first day of the seventh month after
45 enactment, but authorizes the Commissioner of Health and Senior
46 Services to take administrative action in advance as necessary for
47 its implementation.