

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803 of the Public Health Law, sections 405.7 and 751.9 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Paragraph (2) of subdivision (b) of section 405.7 of Title 10 is amended to read as follows:

(2) treatment without discrimination as to race, color, religion, sex, gender identity, national origin, disability, sexual orientation, age, or source of payment;

Subdivision (c) of section 405.7 of Title 10 is amended to read as follows:

(c) Patients' Bill of Rights. For purposes of subdivision (a) of this section, the hospital shall utilize the following Patients' Bill of Rights:

#### Patients' Bill of Rights

As a patient in a hospital in New York State, you have the right, consistent with law, to:

(1) Understand and use these rights. If for any reason you do not understand or you need help, the hospital must provide assistance, including an interpreter.

(2) Receive treatment without discrimination as to race, color, religion, sex, gender identity, national origin, disability, sexual orientation, age, or source of payment.

(3) Receive considerate and respectful care in a clean and safe environment free of unnecessary restraints.

(4) Receive emergency care if you need it.

(5) Be informed of the name and position of the doctor who will be in charge of your care in the hospital.

(6) Know the names, positions, and functions of any hospital staff involved in your care and refuse their treatment, examination or observation.

(7) [A no smoking room.] Identify a caregiver who will be included in your discharge planning and sharing of post-discharge care information or instruction.

(8) Receive complete information about your diagnosis, treatment and prognosis.

(9) Receive all the information that you need to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or treatment.

(10) Receive all the information you need to give informed consent for an order not to resuscitate. You also have the right to designate an individual to give this consent for you if you are too ill to do so. If you would like additional information, please ask for a copy of the pamphlet "Do Not Resuscitate Orders - A Guide for Patients and Families."

(11) Refuse treatment and be told what effect this may have on your health.

(12) Refuse to take part in research. In deciding whether or not to participate, you have the right to a full explanation.

(13) Privacy while in the hospital and confidentiality of all information and records regarding your care.

(14) Participate in all decisions about your treatment and discharge from the hospital. The hospital must provide you with a written discharge plan and written description of how you can appeal your discharge.

(15) Review your medical record without charge and obtain a copy of your medical record for which the hospital can charge a reasonable fee. You cannot be denied a copy solely because you cannot afford to pay.

(16) Receive an itemized bill and explanation of all charges.

(17) View a list of the hospital's standard charges for items and services and the health plans the hospital participates with.

(18) Challenge an unexpected bill through the Independent Dispute Resolution process.

[(17)] (19) Complain without fear of reprisals about the care and services you are receiving and to have the hospital respond to you and if you request it, a written response. If you are not satisfied with the hospital's response, you can complain to the New York State Health Department. The hospital must provide you with the Health Department telephone number.

[(18)] (20) Authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors.

[(19)] (21) Make known your wishes in regard to anatomical gifts. [You] Persons sixteen years of age or older may document [your wishes in your] their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The health care proxy [or on a donor card,] is available from the hospital.

Subdivision (a) of section 751.9 is amended to read as follows:

(a) receive service(s) without regard to age, race, color, sexual orientation, religion, marital status, sex, gender identity, national origin or sponsor;

Subdivision (q) of section 751.9 is amended to read as follows:

(q) when applicable, make known your wishes in regard to anatomical gifts. [You] Persons sixteen years of age or older may document [your wishes in your] their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The health care proxy [or on a donor card] is available from the center.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) § 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement the purposes and provisions of PHL Article 28 and to establish minimum standards governing the operation of health care facilities. Under PHL § 2803(1)(g), the Commissioner shall require that every general hospital adopt and make public an identical statement of the rights and responsibilities of patients.

### **Legislative Objectives:**

The statement of rights of patients under PHL § 2803(1)(g) is intended to include the right to receive treatment without discrimination based on characteristics defined by Article 15 of New York Executive Law (the Human Rights Law), as well as other rights afforded to patients by statute. These include the right to have a caregiver involved in discharge planning, the right to receive information regarding the hospital's standard charges, the right to challenge unexpected bills through an independent dispute resolution process, and the right to make known a patient's wishes with regard to consenting to organ donation in the hospital setting.

### **Current Requirements:**

General hospitals are required by § 405.7 of Title 10 of the New York Compilation of Codes, Rules and Regulations of New York (NYCRR) to provide treatment without discrimination as to race, color, religion, sex, national origin, disability, sexual orientation, age, or source of payment and to adopt and make public a Patients' Bill of Rights that informs

patients of the right to receive treatment absent from such discrimination.

The Caregiver Advise, Record and Enable (CARE) Act, enacted as PHL Article 29-CCCC, gives hospital patients the right to have a caregiver involved in discharge planning. The Surprise Bill Law (Part H of Chapter 60 of the Laws of 2014) enacted PHL § 24 to give hospital patients the right to receive information regarding the hospital's standard charges and enacted Article 6 of the Financial Services Law to give them the right to challenge unexpected bills through an independent dispute resolution process.

PHL § 2803(1)(g) requires hospitals to inform patients of their right to make anatomical gifts and the means by which the patient may make such a donation. PHL §§ 4301, 4303, and 4310 include various ways that an individual who is 16 years of age or older may consent to organ donation, including through enrollment in the New York State Donate Life Registry.

### **Needs and Benefits:**

The New York State Division of Human Rights implements the Human Rights Law and establishes regulations thereunder. Part 466 of Title 9 of the NYCRR contains the general regulations of the Division of Human Rights. The statement of rights of patients under PHL § 2803(1)(g) includes the right to receive treatment without discrimination based on characteristics defined by the Human Rights Law and the regulations of the Division of Human Rights. On January 20, 2016, the Division of Human Rights adopted a regulation adding 9 NYCRR § 466.13. Section 466.13 clarifies that discrimination on the basis of gender identity is sex discrimination and further defines "gender identity" as:

having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.

The proposed amendments to 10 NYCRR §§ 405.7 and 751.9 with respect to gender identity will conform the Patient's Bill of Rights to New York's Human Rights Law.

Under the CARE Act, hospital patients have the right to have a caregiver involved in discharge planning. Under the Surprise Bill Law, hospital patients have the right to receive information regarding the hospital's standard charges and to challenge unexpected bills through an independent dispute resolution process. This proposed regulatory amendment conforms the Patient's Bill of Rights to these statutory requirements.

PHL § 2803(1)(g) requires hospitals to inform patients of his or her right to make anatomical gifts and the means by which the patient may make such a donation. PHL §§ 4301, 4303, and 4310 provide for the right of an individual who is 16 years of age or older to document their consent to make an anatomical gift by a variety of mechanisms in New York State (*i.e.*, the New York State Donate Life Registry, health care proxy, wills, donor cards or a signed paper). This proposal updates the Patients' Bill of Rights to clarify that patients not only have the right to express their wish or intent to donate their organs, but have the right to consent to donation and to document such consent through various mechanisms including enrollment in the NYS Donate Life Registry.

## **COSTS:**

### **Costs to Private Regulated Parties:**

This amendment is a clarification of rights that patients already have in New York State. Health care facilities will incur minimal costs in order to change the Patients' Bill of Rights made available to patients. Hospitals and D&TCs may also need to update training materials for staff.

**Costs to Local Government:**

This proposal will not impact local governments unless they operate a general hospital or D&TC, in which case the impact would be the same as outlined above for private parties.

**Costs to the Department of Health:**

The proposed regulatory changes will not result in any additional operational costs to the Department of Health.

**Costs to Other State Agencies:**

The proposed regulatory changes will not result in any additional costs to other state agencies.

**Local Government Mandate:**

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients. Therefore, the proposed regulations should not significantly increase their paperwork.

**Duplication:**

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

**Alternatives:**

The alternative would be to take no action, which would result in a lack of consistency between the Human Rights Law and the Patients' Bill of Rights. Similarly, the Patient's Bill of Rights would be inconsistent with the PHL provisions related to the CARE Act, the Surprise Bill Law, and organ donation.

**Federal Standards:**

The proposed regulations do not duplicate or conflict with any federal regulations.

**Compliance Schedule:**

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

The proposed regulation will apply to all general hospitals and diagnostic and treatment centers (D&TCs) in New York State. This proposal will not impact local governments or small business unless they operate a general hospital or D&TC. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

### **Compliance Requirements:**

These regulations will require general hospitals and D&TCs to change their patients' bill of rights.

### **Professional Services:**

General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients.

### **Compliance Costs:**

Compliance costs are minimal, as they only require editing and reprinting the Patients' Bill of Rights.

### **Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

The anticipated impact of the proposal is minimal. General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients.

**Small Business and Local Government Participation:**

Organizations that include as members general hospitals and D&TCs were consulted on the proposed regulations. Additionally, the proposed regulation will have a 60-day public comment period.

**Cure Period:**

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Approximately 17% of small health care facilities are located in rural areas.

.Allegany County	.Greene County	.Schoharie County
.Cattaraugus County	.Hamilton County	.Schuyler County
.Cayuga County	.Herkimer County	.Seneca County
.Chautauqua County	.Jefferson County	.St. Lawrence County
.Chemung County	.Lewis County	.Steuben County
.Chenango County	.Livingston County	.Sullivan County
.Clinton County	.Madison County	.Tioga County
.Columbia County	.Montgomery County	.Tompkins County
.Cortland County	.Ontario County	.Ulster County
.Delaware County	.Orleans County	.Warren County
.Essex County	.Oswego County	.Washington County
.Franklin County	.Otsego County	.Wayne County
.Fulton County	.Putnam County	.Wyoming County
.Genesee County	.Rensselaer County	.Yates County
	.Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

.Albany County	.Monroe County	.Orange County
.Broome County	.Niagara County	.Saratoga County
.Dutchess County	.Oneida County	.Suffolk County
.Erie County	.Onondaga County	

There are 47 general hospitals, approximately 90 diagnostic and treatment centers (D&TCs), 159 nursing homes, and 92 certified home health agencies in rural areas.

**Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:**

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose minimal costs upon hospitals, which are already required to make the Patient's Bill of Rights available to patients. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to increase the administrative burden on these entities.

**Costs:**

Hospitals are already required to make the Patients' Bill of Rights available to patients. The cost of the small wording change to the Patients' Bill of Rights will be insubstantial.

**Minimizing Adverse Impact:**

The impact is minimal.

**Rural Area Participation:**

Organizations that include as members general hospitals and D&TCs located in rural areas were consulted on the proposed regulations.

**STATEMENT IN LIEU OF JOB IMPACT STATEMENT**

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.

## ASSESSMENT OF PUBLIC COMMENT

**Comment:** The Chairs of the New York State Assembly Committees on Health and on Administrative Regulations commented that a provision in the Patients' Bill of Rights that states that a patient has right to a "no smoking room" is obsolete. Smoking is now prohibited within hospitals, on hospital grounds, and within 15 feet of the entrance to or exit from the hospital or hospital grounds.

**Response:** The Department agrees that the provision is obsolete and has removed it. The paragraph has been repurposed to accommodate one of the new provisions that was proposed.

**Comment:** The New York City Department of Health and Mental Hygiene noted that the provision in the Patients' Bill of Rights relating to diagnostic and treatment centers, stating that a patient has a right to make their wishes known regarding anatomical gifts, is overbroad because patients at many such clinics have no reason to make an anatomical gift, based on the services provided at the clinic.

**Response:** The phrase "when applicable" has been added to the provision to add clarity.